of this section. A competing telecommunications carrier, interconnected with the rural telephone company, however, may petition the FCC to remove the exemption, or the FCC may do so on its own motion, where the rural telephone company has engaged in anticompetitive conduct.

(2) *Incumbent LECs with fewer than 2 percent of subscriber lines.* Incumbent LECs with fewer than 2 percent of the nation's subscriber lines installed in the aggregate nationwide may petition the FCC for suspension or modification of the requirements set forth in paragraphs (a), (b) and (c) of this section. The FCC will grant such a petition where the incumbent LEC demonstrates that suspension or modification of the separate affiliate requirement is

(i) Necessary to avoid a significant adverse economic impact on users of telecommunications services generally or to avoid a requirement that would be unduly economically burdensome, and

(ii) Consistent with the public interest, convenience, and necessity.

(e) *Definitions.* Terms used in this section have the following meanings:

Affiliate. ''Affiliate'' means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership with, another person. For purposes of this section, the term ''own'' means to own an equity interest (or the equivalent thereof) of more than 10 percent.

Broadband Commercial Mobile Radio Service (Broadband CMRS). For the purposes of this section, ''broadband CMRS'' means Domestic Public Cellular Radio Telecommunications Service (part 22, subpart H of this chapter), Specialized Mobile Radio (part 90, subpart S of this chapter), and broadband Personal Communications Services (part 24, subpart E of this chapter).

Incumbent Local Exchange Carrier (Incumbent LEC). ''Incumbent LEC'' has the same meaning as that term is defined in §51.5 of this chapter.

In-region. For the purposes of this section, an incumbent LEC's broadband CMRS service is considered ''in-region'' when 10 percent or more of the population covered by the CMRS affiliate's authorized service area, as determined by the 1990 census figures, is within the affiliated incumbent LEC's wireline service area.

Rural Telephone Company. ''Rural Telephone Company'' has the same meaning as that term is defined in §51.5 of this chapter.

(f) *Sunset.* This section will no longer be effective after January 1, 2002.

[62 FR 63871, Dec. 3, 1997]

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

Subpart A—General

Sec.

Subpart B—Applications and Licenses

GENERAL FILING REQUIREMENTS

PROCESSING OF APPLICATIONS

AUTHORITY: Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 403, 404, 410, 602, 48 Stat. as amended, 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552, 554.

SOURCE: 44 FR 60534, Oct. 19, 1979, unless otherwise noted.

Subpart A—General

§21.1 Scope and authority.

(a) The purpose of the rules and regulations in this part is to prescribe the manner in which portions of the radio spectrum may be made available for domestic communication common carrier and multipoint distribution service non-common carrier operations which require transmitting facilities on land or in specified offshore coastal areas within the continental shelf.

(b) The rules in this part are issued pursuant to the authority contained in Titles I through III of the Communications Act of 1934, as amended, which vest authority in the Federal Communications Commission to regulate common carriers of interstate and foreign communications, to regulate radio transmissions and issue licenses for radio stations, and to regulate all interstate and foreign communications by wire and radio necessary to the accomplishment of the purposes of the Act.

(c) Unless otherwise specified, the section numbers referenced in this part are contained in chapter I, title 47 of the Code of Federal Regulations.

[52 FR 37776, Oct. 9, 1987]

§21.2 Definitions.

As used in this part:

Antenna power gain. The square of the ratio of the root-mean-square free space field intensity produced at one mile in the horizontal plane, in millivolts per meter for one kilowatt antenna input power to 137.6 mV/m. This ratio should be expressed in decibels (dB). (If specified for a particular direction, antenna power gain is based on the field strength in that direction only.)

Antenna power input. The radio frequency peak or RMS power, as the case may be, supplied to the antenna from the antenna transmission line and its associated impedance matching network.

Antenna structures. The antenna, its supporting structure and anything attached to it.

Assigned frequency. The centre of the frequency band assigned to a station.

Authorized bandwidth. The maximum width of the band of frequencies permitted to be used by a station. This is normally considered to be the necessary or occupied bandwidth, whichever is greater.

Authorized frequency. The frequency, or frequency range, assigned to a station by the Commission and specified in the instrument of authorization.

Authorized power. The maximum power a station is permitted to use. This power is specified by the Commission in the station's authorization.

Bandwidth occupied by an emission. The band of frequencies comprising 99 percent of the total radiated power extended to include any discrete frequency on which the power is at least 0.25 percent of the total radiated power.

Basic Trading Area (BTA). The geographic areas by which the Multipoint

Distribution Service is licensed. BTA boundaries are based on the Rand McNally 1992 Commercial Atlas and Marketing Guide, 123rd Edition, pp. 36–39, and include six additional BTA-like areas as specified in § 21.924(b).

Bit rate. The rate of transmission of information in binary (two state) form in bits per unit time.

Booster service area. A geographic area to be designated by an applicant for a booster station, within which the booster station shall be entitled to protection against interference as set forth in this part. The booster service area must be specified by the applicant so as to not overlap the booster service area of any other booster authorized to or proposed by the applicant. However, a booster station may provide service to receive sites outside of its booster service area, at the licensee's risk of interference.

BTA authorization holder. The individual or entity authorized by the Commission to provide Multipoint Distribution Service to the population of a BTA.

BTA service area. The area within the boundaries of a BTA to which a BTA authorization holder may provide Multipoint Distribution Service. This area excludes the protected service areas of incumbent MDS stations and previously proposed and authorized ITFS facilities, including registered receive sites.

Carrier. In a frequency stabilized system, the sinusoidal component of a modulated wave whose frequency is independent of the modulating wave; or the output of a transmitter when the modulating wave is made zero; or a wave generated at a point in the transmitting system and subsequently modulated by the signal; or a wave generated locally at the receiving terminal which when combined with the side bands in a suitable detector, produces the modulating wave.

Carrier frequency. The output of a transmitter when the modulating wave is made zero.

Channel. Unless otherwise specified, a channel under this part shall refer to a 6 MHz frequency block assigned pursuant to §§ 21.901(b) or 74.902(a) of this chapter.

Communication common carrier. Any person engaged in rendering communication service for hire to the public.

Control point. A control point is an operating position at which an operator responsible for the operation of the transmitter is stationed and which is under the control and supervision of the licensee.

Control station. A fixed station whose transmissions are used to control automatically the emissions or operations of another radio station at a specified location, or to transmit automatically to an alarm center telemetering information relative to the operation of such station.

Coordination distance. For the purpose of this part, the expression ''coordination distance'' means the distance from an earth station, within which there is a possibility of the use of a given transmitting frequency at this earth station causing harmful interference to stations in the fixed or mobile service, sharing the same band, or of the use of a given frequency for reception at this earth station receiving harmful interference from such stations in the fixed or mobile service.

Digital modulation. The process by which some characteristic (frequency, phase, amplitude or combinations thereof) of a carrier frequency is varied in accordance with a digital signal, e.g. one consisting of coded pulses or states.

Documented complaint. A complaint that a party is suffering from non-consensual interference. A documented complaint must contain a certification that the complainant has contacted the operator of the allegedly offending facility and tried to resolve the situation prior to filing. The complaint must then specify the nature of the interference, whether the interference is constant or intermittent, when the interference began and the site(s) most likely to be causing the interference. The complaint should be accompanied by a videotape or other evidence showing the effects of the interference. The complaint must contain a motion for a temporary order to have the interfering station cease transmitting. The complaint must be filed with the Secretary's office and served on the allegedly offending party.

Domestic fixed public service. A fixed service, the stations of which are open to public correspondence, for radiocommunications originating and terminating solely at points all of which lie within:

(a) The State of Alaska;

(b) The State of Hawaii;

(c) The contiguous 48 States and the District of Columbia; or

(d) A single possession of the United States. Generally, in cases where service is afforded on frequencies above 72 MHz, radio-communications between the contiguous 48 States (including the District of Columbia) and Canada or Mexico, or radiocommunications between the State of Alaska and Canada, are deemed to be in the domestic fixed public service.

Domestic public radio services. The land mobile and domestic fixed public services the stations which are open to public correspondence.

NOTE: Part 80 of this chapter is applicable to the maritime services and fixed stations associated with the maritime services; part 87 of this chapter is applicable to aeronautical services.

Earth station. A station located either on the earth's surface or within the major portion of the earth's atmosphere and intended for communications:

(a) With one or more space stations; or

(b) With one or more stations of the same kind by means of one or more reflecting satellites or other objects in space.

Effective radiated power (ERP). The product of the power supplied to the antenna and its gain relative to a half-wave dipole in a given direction.

Equivalent Isotropically Radiated Power (EIRP). The product of the power supplied to the antenna and the antenna gain in a given direction relative to an isotropic antenna. This product may be expressed in watts or dB above 1 watt (dBW).

Facsimile. A form of telegraphy for the transmission of fixed images, with or without half-tones, with a view to their reproduction in a permanent form.

Fixed earth station. An earth station intended to be used at a specified fixed point.

Fixed station. A station in the fixed service.

Frequency tolerance. The maximum permissible departure by the centre frequency of the frequency band occupied by an emission from the assigned frequency or, by the characteristic frequency of an emission from the reference frequency. The frequency tolerance is expressed as a percentage or in Hertz.

Harmful interference. Interference which endangers the functioning of a radionavigation service or of other safety services or seriously degrades, obstructs, or repeatedly interrupts a radiocommunication service.

Incumbent. An MDS station that was authorized or proposed before September 15, 1995, including those stations that are subsequently modified, renewed or reinstated.

Landing area. A landing area means any locality, either of land or water, including airports and intermediate landing fields, which is used, or approved for use for the landing and take-off of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo.

Microwave frequencies. As used in this part, this term refers to frequencies of 890 MHz and above.

Multichannel Multipoint Distribution Service (MMDS). Those Multipoint Distribution Service Channels that use the frequency band 2596 MHz to 2644 MHz and associated 125 kHz channels.

Multipoint Distribution Service (MDS). A domestic public radio service rendered on microwave frequencies from one or more fixed stations transmitting to multiple receiving facilities located at fixed points. MDS also may encompass transmissions from response stations to response station hubs or associated fixed stations.

Multipoint Distribution Service response station. A fixed station operated by an MDS licensee, the lessee of MDS channel capacity or a subscriber of either to communicate with a response station hub or associated MDS station. A response station under this part may share facilities with other MDS response stations and/or one or more Instructional Television Fixed Service (ITFS) response stations authorized

pursuant to § 74.939 of this chapter or § 74.940 of this chapter.

Necessary bandwidth of emission. For a given class of emission, the width of the frequency band that is just sufficient to ensure the transmission of information at the rate and with the quality required under specified conditions.

NOTE: The necessary bandwidth for an emission may be calculated using the formulas in § 2.202 of this chapter.

Partitioned service area authorization holder. The individual or entity authorized by the Commission to provide Multipoint Distribution Service to the population of a partitioned service area.

Partitioned service area (PSA). The area within the coterminous boundaries of one of more counties or other geopolitical subdivisions, drawn from a BTA, to which an authorization holder may provide Multipoint Distribution Service or the area remaining in a BTA upon partitioning any portion of that BTA. This area excludes the protected service areas of incumbent MDS stations and previously proposed and authorized ITFS stations, including registered receive sites.

Private line service. A service whereby facilities for communication between two or more designated points are set aside for the exclusive use or availability for use of a particular customer and authorized users during stated periods of time.

Public correspondence. Any telecommunication which the offices and stations, by reason of their being at the disposal of the public, must accept for transmission.

Radio station. A separate transmitter or a group of transmitters under simultaneous common control, including the accessory equipment required for carrying on a radiocommunication service.

Radiocommunication. Telecommunication by means of radio waves.

Rated power output. The term ''rated power output'' of a transmitter means the normal radio frequency power output capability (Peak or Average Power) of a transmitter, under optimum conditions of adjustment and operation, specified by its manufacturer.

Record communication. Any transmission of intelligence which is reduced to visual record form at the point of reception.

Reference frequency. A frequency having a fixed and specified position with respect to the assigned frequency. The displacement of this frequency with respect to the assigned frequency has the same absolute value and sign that the displacement of the characteristic frequency has with respect to the center of the frequency band occupied by the emission.

Relay station. A fixed station used for the reception and retransmission of the signals of another station or stations.

Repeater station. A fixed station established for the automatic retransmission of radiocommunications received from one or more stations and directed to a specified receiver site.

Response station hub. A fixed facility licensed to an MDS licensee, and operated by an MDS licensee or the lessee of an MDS facility, for the reception of information transmitted by one or more MDS response stations that utilize digital modulation. A response station hub licensed under this part may share facilities with other MDS response station hubs, ITFS response station hubs authorized pursuant to § 74.939 of this chapter, MDS signal booster stations, ITFS signal booster stations, MDS stations, and/or ITFS stations.

Response station hub license. A blanket license authorizing the operation of a single response station hub at a specific location and the operation of a specified number of associated digital response stations of one or more classes at unspecified locations within one or more regions of the response service area.

Sectorization. The use of an antenna system at an MDS station, booster station and/or response station hub that is capable of simultaneously transmitting multiple signals over the same frequencies to different portions of the service area and/or simultaneously receiving multiple signals over the same frequencies from different portions of the service area.

Signal Booster Station. An MDS station licensed for use in accordance with § 21.913 that operates on one or more

MDS channels. Signal booster stations are intended to augment service as part of a distributed transmission system where signal booster stations retransmit the signals of one or more MDS stations and/or originate transmissions on MDS channels. A signal booster station licensed under this part may share facilities with other MDS signal booster stations, ITFS signal booster stations authorized pursuant to §74.985 of this chapter, MDS response station hubs and/or ITFS response station hubs.

Standby transmitter. A transmitter installed and maintained for use in lieu of the main transmitter only during periods when the main transmitter is out of service for maintenance or repair.

Symbol rate. Modulation rate in bauds. This rate may be higher than the transmitted bit rate as in the case of coded pulses or lower as in the case of multilevel transmission.

Television. A form of telecommunication for transmission of transient images of fixed or moving objects.

Television STL station (studio transmitter link). A fixed station used for the transmission of television program material and related communications from a studio to the transmitter of a television broadcast station.

[61 FR 26671, May 28, 1996, as amended at 63 FR 65100, Nov. 25, 1998; 64 FR 63730, Nov. 22, 1999]

Subpart B—Applications and Licenses

GENERAL FILING REQUIREMENTS

§21.3 Station authorization required.

(a) No person shall use or operate apparatus for the transmission of energy or communications or signals by radio except under, and in accordance with, an appropriate authorization granted by the Federal Communications Commission. Except as otherwise provided herein, no construction or modification of a station may be commenced without an authorization from the Commission. Authorizations for domestic public fixed radio services are governed by the provisions of this part.

(b) If construction and or operation may have a significant environmental impact as defined by §1.1307 of the Commission's rules, the requisite environmental assessment as prescribed in §1.1311 of this chapter must be filed with the application and Commission environmental review must be completed before construction of the station is initiated. See §1.1312 of this chapter.

[52 FR 37777, Oct. 9, 1987, as amended at 55 FR 20397, May 16, 1990; 61 FR 26673, May 28, 1996]

§21.4 Eligibility for station license.

A station license may not be granted to or held by:

(a) Any alien or the representative of any alien.

(b) Any foreign government or the representative thereof.

(c) Any corporation organized under the laws of any foreign government.

(d) Any corporation of which more than one-fifth of the capital stock is owned of record or voted by: aliens or their representatives; a foreign government or representatives thereof; or any corporation organized under the laws of a foreign country.

(e) Any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens or their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign government, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

[44 FR 60534, Oct. 19, 1979, as amended at 61 FR 55580, Oct. 28, 1996]

§21.5 Formal and informal applications.

(a) Except for an authorization under any of the proviso clauses of section 308(a) of the Communications Act of 1934 (47 U.S.C. 308(a)), the Commission shall grant the following authorizations only upon written application: Station licenses; modifications of station licenses; renewals of station licenses; extensions of time to construct; transfers and assignments of station licenses or of any rights thereunder.

(b) Except as may be otherwise permitted by this part, a separate written

application shall be filed for each instrument of authorization requested. Applications may be:

(1) ''Formal applications'' where the Commission has prescribed in this part a standard form; or

(2) ''Informal applications'' (normally in letter form) where the Commission has not prescribed a standard form.

(c) An informal application will be accepted for filing only if:

(1) A standard form is not prescribed or clearly applicable to the authorization requested;

(2) It is a document submitted, in duplicate, with a caption which indicates clearly the nature of the request, radio service involved, location of the station, and the application file number (if known); and

(3) It contains all the technical details and informational showings required by the rules and states clearly and completely the facts involved and authorization desired.

[44 FR 60534, Oct. 19, 1979, as amended at 52 FR 37777, Oct. 9, 1987]

§ 21.6 Filing of applications, fees, and number of copies.

(a) As prescribed by §§ 21.7 and 21.11 of this part, standard formal application forms applicable to the radio services included in this part may be obtained from either:

(1) Federal Communications Commission, Washington, DC 20554; or

(2) Any of the Commission's field operations offices, the addresses of which are listed in § 0.121.

(b) Applications requiring fees as set forth in part 1, subpart G of this chapter must be filed in accordance with § 0.401(b) of this chapter. Applications not requiring fees shall be submitted to: Federal Communications Commission, Washington, DC 20554.

(c) All correspondence or amendments concerning a submitted application shall clearly identify the radio service, the name of the applicant, station location, and the Commission file number (if known) or station call sign of the application involved. All correspondence or amendments concerning a submitted application may be sent directly to the Mass Media Bureau.

(d) Except as otherwise specified, all applications, amendments, and correspondence shall be submitted in duplicate, including exhibits and attachments thereto, and shall be signed as prescribed by § 1.743.

(e) Each application shall be accompanied by the appropriate fee prescribed by, and submitted in accordance with, subpart G of part 1 of this chapter.

[44 FR 60534, Oct. 19, 1979, as amended at 52 FR 10230, Mar. 31, 1987; 52 FR 37777, Oct. 9, 1987; 58 FR 19774, Apr. 16, 1993; 61 FR 26673, May 28, 1996]

§ 21.7 Standard application form for domestic public fixed radio service licenses.

Except for the Multipoint Distribution Service, FCC Form 494 (''Application for a New and Modified Microwave Radio Station License Under Part 21'') shall be submitted and a license granted for each station prior to commencement of any proposed station construction. FCC Form 494 also shall be submitted to amend any license application, to modify any license pursuant to §§ 21.40(a) and 21.41, to notify the Commission of modifications made pursuant to § 21.42, and to delete licensed facilities. FCC Form 494A shall be submitted to certify completion of construction.

[52 FR 37777, Oct. 9, 1987, as amended at 60 FR 36551, July 17, 1995]

§§ 21.8–21.10 [Reserved]

§ 21.11 Miscellaneous forms.

(a) *Licensee qualifications.* FCC Form 430 (''Licensee Qualification Report'') must be filed annually, no later than March 31 for the end of the preceding calendar year, unless the licensee operates solely on a common carrier basis and service was not offered at any time during the preceding year. Each annual filing must include all changes of information required by FCC Form 430 that occurred during the preceding year. In those cases in which there has been no change in any of the required information, the applicant or licensee, in lieu of submitting a new form, may so notify the Commission by letter.

(b) *Additional time to construct*—FCC Form 701 (''Application for Additional

Time to Construct Radio Station'') shall be filed in duplicate by a licensee prior to the expiration of the time for construction noted in a license if a licensee seeks to modify the license by extending the period of construction.

(c) *Renewal of station license.* Except for renewal of special temporary authorizations, FCC Form 405 (''Application for Renewal of Station License'') must be filed in duplicate by the licensee between thirty (30) and sixty (60) days prior to the expiration date of the license sought to be renewed. Whenever a group of station licenses in the same radio service are to be renewed simultaneously, a single ''blanket'' application may be filed to cover the entire group, if the application identifies each station by call sign and station location and if two copies are provided for each station affected. Applicants should note also any special renewal requirements under the rules for each radio service.

(d) *Assignment of license.* FCC Form 305 (''Application for Consent to Assignment of Radio Station Construction Authorization or License (for Stations in Services Other than Broadcast)'') must be submitted to assign voluntarily (as by, for example, contract or other agreement) or involuntarily (as by, for example, death, bankruptcy, or legal disability) the station license or conditional license. In the case of involuntary assignment, the application must be filed within 30 days of the event causing the assignment. FCC Form 305 also must be used for nonsubstantial (*pro forma*) assignments. In addition, FCC Form 430 must be submitted by the proposed assignee unless such assignee has a current and substantially accurate report on file with the Commission. Whenever a group of station licenses or conditional licenses in the same radio service is to be assigned to a single assignee, a single ''blanket'' application may be filed to cover the entire group, if the application identifies each station by call sign and station location and if two copies are provided for each station affected. The assignment must be completed within 45 days from the date of authorization. Upon consummation of an approved assignment, the Commission must be notified by letter of the date of consummation within 10 days of its occurrence.

(e) *Partial assignment of license.* In the microwave services, authorization for assignment from one company to another of only a part or portions of the facilities (transmitters) authorized under an existing license (as distinguished from an assignment of the facilities in their entirety) may be granted upon application:

(1) By the assignee on FCC Form 494 and

(2) By the assignor on FCC Form 494 for deletion of the assigned facilities, indicating concurrence in the assignee's request.

The assignment shall be consummated within 45 days from the date of authorization. In the event that consummation does not occur, FCC Form 494 shall be submitted to return the assignor's license to its original condition.

EDITORIAL NOTE: At 63 FR 65100, Nov. 25, 1999, paragraphs (f) and (g) were redesignated as paragraphs (e) and (f) and newly designated paragraph (e) was revised. However, paragraph (e) already exists. The text of the newly redesignated paragraph (e) follows.

(e) *Transfer of control of corporation holding a conditional license or license.* FCC Form 306 (''Application for Consent to Transfer of Control'') must be submitted in order to voluntarily or involuntarily transfer control (de jure or de facto) of a corporation holding any conditional licenses or licenses. In the case of involuntary transfer of control, the application must be filed within 30 days of the event causing the transfer of control. FCC Form 306 also must be used for nonsubstantial (*pro forma*) transfers of control. In addition, FCC Form 430 must be submitted by the proposed transferee unless such transferee has a current and substantially accurate report on file with the Commission. Whenever control of a corporation holding a group of station licenses or conditional licenses in the same radio service is to be transferred to a single transferee, a single ''blanket'' application may be filed to cover the entire transfer, if the application identifies each station by call sign and station location and if two copies are provided for each station affected. The transfer must be completed within 45

days from the date of authorization. Upon consummation of an approved transfer, the Commission must be notified by letter of the date of consummation within 10 days of its occurrence.

(f) *Antenna Structure Registration.* FCC Form 854 (Application for Antenna Structure Registration) accompanied by a final Federal Aviation Administration (FAA) determination of ''no hazard'' must be filed by the antenna structure owner to receive an antenna structure registration number. Criteria used to determine whether FAA notification and registration is required for a particular antenna structure are contained in Part 17 of this chapter.

[44 FR 60534, Oct. 19, 1979, as amended at 52 FR 27554, July 22, 1987; 52 FR 37777, Oct. 9, 1987; 56 FR 57815, Nov. 14, 1991; 61 FR 4364, Feb. 6, 1996; 63 FR 65100, Nov. 25, 1998; 64 FR 63730, Nov. 22, 1999]

§ 21.12 [Reserved]

§ 21.13 General application requirements.

(a) Each application for a license or for consent to assignment or transfer of control shall:

(1) Disclose fully the real party (or parties) in interest, including (as required) a complete disclosure of the identify and relationship of those persons or entities directly or indirectly owning or controlling (or both) the applicant;

(2) Demonstrate the applicant's legal, financial, technical, and other qualifications to be a permittee or licensee;

(3) Submit the information required by the Commission's Rules, requests, and application forms;

(4) Except for applications in the Multipoint Distribution Service filed on or after September 15, 1995, state specifically the reasons why a grant of the proposal would serve the public interest, convenience, and necessity.

(5) Be maintained by the applicant substantially accurate and complete in all significant respects in accordance with the provisions of §1.65 of this chapter; and

(6) Show compliance with the special requirements applicable to each radio service and make all special showings that may be applicable (*e.g.*, those required by secs. 21.900, 21.912 and 21.913).

(b) Applications filed in the Multipoint Distribution Service shall not cross-reference previously filed material.

(c) In addition to the general application requirements of §§21.13 through 21.17 of this part, applicants shall submit any additional documents, exhibits, or signed written statements of fact:

(1) As may be required by the other parts of the Commission's Rules, and the other subparts of Part 21 (particularly Subpart C and those subparts applicable to the specific radio service involved); and

(2) As the Commission, at any time after the filing of an application and during the term of any authorization, may require from any applicant, permittee, or licensee to enable it to determine whether a radio authorization should be granted, denied, or revoked.

(d) Except when the Commission has declared explicitly to the contrary, an informational requirement does not in itself imply the processing treatment of decisional weight to be accorded the response.

(e) All applicants are required to indicate at the time their application is filed whether an authorization of the facilities is categorically excluded as defined by §1.1306 of the Commission's rules. If answered affirmatively, an Environmental Assessment as described by §1.1311, need not be filed with the application.

(f) Whenever an individual applicant, or a partner (in the case of a partnership) or a full time manager (in the case of a corporation) will not actively participate in the day-to-day management and operation of proposed facilities, the applicant or licensee will submit a statement containing the reasons therefor and disclosing the details of the proposed operation, including a demonstration of how control over the radio facilities will be retained by the applicant. If the operation of a radio station is to be accomplished by contractual arrangement with an entity unrelated to an applicant or licensee, the applicant or licensee shall file a copy of the agreement or contract which shall demonstrate that:

(1) The operation is accomplished according to general instructions provided for by the applicant;

(2) The applicant retains effective control over the radio facilities and their operations; and

(3) The applicant assumes full responsibility for both the quality of service and for contractor compliance with the Commission's Rules.

[44 FR 60534, Oct. 19, 1979, as amended at 47 FR 29244, July 6, 1982; 51 FR 15003, Apr. 22, 1986; 52 FR 37778, Oct. 9, 1987; 55 FR 46008, Oct. 31, 1990; 58 FR 19774, Apr. 16, 1993; 58 FR 44894, Aug. 25, 1993; 60 FR 36551, July 17, 1995; 61 FR 26673, May 28, 1996]

§21.14 [Reserved]

§21.15 Technical content of applications.

Applications shall contain all technical information required by the application form and any additional information necessary to fully describe the proposed facilities and to demonstrate compliance with all technical requirements of the rules governing the radio service involved (see subparts C, F and K as appropriate). The following paragraphs describe a number of technical requirements.

(a)(1) Except in the case of applicants for Multipoint Distribution Service, applicants proposing a new station location (including receive-only stations and passive repeaters) must indicate whether the station site is owned. If it is not owned, its availability for the proposed radio station site must be demonstrated. Under ordinary circumstances, this requirement will be considered satisfied if the site is under lease or under written option to buy or lease.

(2) Where any lease or agreement to use land limits or conditions in any way the applicant's access or use of the site to provide public service, a copy of the lease or agreement (which clearly indicates the limitations or conditions) must be filed with the application, except in the case of applicants for stations in the Multipoint Distribution Service. Multipoint Distribution Service applicants must instead certify compliance with the limitations and conditions contained in the lease or option agreement.

(3) Except for BTA and PSA authorization holders, Multipoint Distribution Service applicants proposing a new station location must certify the proposed station site will be available to the applicant for timely construction of the facilities during the initial construction period.

(4) An applicant's failure to include a certification required under this Section will result in dismissal of the application. The submission of a false certification will subject the applicant to all remedies available to the Commission, including the dismissal with prejudice of all applications filed by the offending applicant and the revocation of authorizations of the offending applicant. Also, if evidence of intent exists, the case will be referred to the Department of Justice for criminal prosecution under 18 U.S.C. 1001. In addition, the submission of an intentionally falsified certification will be treated as a reflection on an applicant's basic qualifications to become or to remain a licensee.

(b) [Reserved]

(c) Each application involving a new or modified transmitting antenna supporting structure, passive facility, or the addition or removal of a transmitting antenna, or the repositioning of an authorized antenna for a station must be accompanied by a vertical profile sketch of the total structure depicting its structural nature and clearly indicating the ground elevation (above sea level) at the structure site, the overall height of the structure above ground (including obstruction lights when required, lightning rods, etc.) and, if mounted on a building, its overall height above the building. The proposed antenna on the structure must be clearly identified and its height above-ground (measured to the center of radiation) clearly indicated. Alternatively, applicants in the Multipoint Distribution Service who filed applications on or after September 15, 1995, may provide this information in the MDS long-form application.

(d) Each application proposing a new or modified antenna structure for a station (including a passive repeater or signal booster station) so as to change its overall height shall indicate whether any necessary notification of the

FAA has been made. Complete information as to rules concerning the construction, marking and lighting of antenna structures is contained in part 17 of this chapter. See also §21.111 if the structure is used by more than one station.

(e) *Antenna Structure Registration Number.* Applications proposing construction of a new antenna structure or alteration of the overall height of an existing antenna structure, where FAA notification prior to such construction or alteration is required by part 17 of this chapter, must include the FCC Antenna Structure Registration Number for the affected structure. If no such number has been assigned at the time the application is filed, the applicant must state in the application whether or not the antenna structure owner has notified the FAA of the proposed construction or alteration and applied to the FCC for an Antenna Structure Registration Number in accordance with Part 17 of this chapter of this structure for the antenna structure in question.

(f) Except for applicants in the Multipoint Distribution Service who filed applications on or after September 15, 1995, an applicant proposing construction of one or more new stations or modification of existing stations where substantial changes in the operation or maintenance procedures are involved must submit a showing of the general maintenance procedures involved to insure the rendition of good public communications service. The showing should include but need not be limited to the following.

(1) Location and telephone number (if known) of the maintenance center for a point to point microwave system. In lieu of providing the location and telephone number of the maintenance on a case by case basis, a licensee may file a complete list for all operational stations with the Commission and the Engineer-In-Charge of the appropriate radio district on an annual basis or at more frequent intervals as necessary to keep the information current.

(2) The manner in which technical personnel are made aware of malfunction at any of the stations and the appropriate time required for them to reach any of the stations in the event of an emergency. If fault alarms are to be used, the items to be alarmed shall be specified as well as the location of the alarm center.

(g) Applications in the Multipoint Distribution Service filed before September 15, 1995, proposing a new or replacement antenna (excluding omni-directional antennas) shall include an antenna radiation pattern showing the antenna power gain distribution in the horizontal plane expressed in decibels, unless such pattern is known to be on file with the Commission in which case the applicant may reference in its application the FCC-ID number that indicates that the pattern is on file with the Commission. Multipoint Distribution Service applicants who filed applications on or after September 15, 1995 must provide related information in completing an MDS long-form application.

(h) Except for applications in the Multipoint Distribution Service filed on or after September 15, 1995, each application in the Point-to-Point Radio, Local Television Transmission and Digital Electronic Message Service (excluding user stations) proposing a new or replacement antenna (excluding omni-directional antennas) shall include an antenna radiation pattern showing the antenna power gain distribution in the horizontal plane expressed in decibels, unless such pattern is known to be on file with the Commission in which case the applicant may reference in its application the FCC–ID number that indicates that the pattern is on file with the Commission. Multipoint Distribution Service applicants who filed applications on or after September 15, 1995 must provide related information in completing an MDS long-form application.

[44 FR 60534, Oct. 19, 1979, as amended at 46 FR 23449, Apr. 27, 1981; 52 FR 37778, Oct. 9, 1987; 58 FR 11797, Mar. 1, 1993; 60 FR 36551, July 17, 1995; 60 FR 57366, Nov. 15, 1995; 61 FR 4364, Feb. 6, 1996; 61 FR 26673, May 28, 1996]

§ 21.16 [Reserved]

§ 21.17 Certification of financial qualifications.

Each application for a new license and each application for a major modification of an existing station shall

contain a certification that the applicant has or will have the financial ability to meet the expected costs of constructing the facilities within the time allowed and the estimated operating expenses for a period of twelve months.

[52 FR 37778, Oct. 9, 1987]

§ 21.18 [Reserved]

§ 21.19 Waiver of rules.

Waivers of these rules may be granted upon application or on the Commission's own motion. A request for waiver shall contain a statement of reasons sufficient to justify a waiver. A waiver will not be granted except upon an affirmative showing that:

(a) The underlying purpose of the rule will not be served, or would be frustrated, by its application in the particular case, and that grant of the waiver is otherwise in the public interest; or

(b) The unique facts and circumstances of a particular case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest. Applicants must also show the lack of a reasonable alternative.

[52 FR 37778, Oct. 9, 1987]

§ 21.20 Defective applications.

(a) Unless the Commission shall otherwise permit, an application will be unacceptable for filing and will be returned to the applicant with a brief statement as to the omissions or discrepancies if:

(1) The application is defective with respect to completeness of answers to questions, informational showings, execution, or other matters of a formal character; or

(2) The application does not substantially comply with the Commission's rules, regulations, specific requests for additional information, or other requirements.

(b) By way of illustration only, and not in any way limiting the scope of paragraph (a), the following are examples of common deficiencies which result in defective applications under paragraph (a):

(1) The application is not properly executed;

(2) The submitted filing fee (if a filing fee is required) is insufficient;

(3) The application does not demonstrate how the proposed radio facilities will serve the public interest, convenience or necessity;

(4) The application does not demonstrate compliance with the special requirements applicable to the radio service involved;

(5) The application does not certify the availability of the proposed station site.

(6) The application does not include the environmental assessment required for any significant environmental impact under the Commission's environmental rules (part 1, subpart I);

(7) The application does not specify the polarization and, where applicable, the antenna orientation azimuth and distance;

(8) The application does not include all necessary exhibits;

(9) The application is filed after the cutoff date prescribed in § 21.31 or § 21.914 of this part; or

(10) The application proposes the use of a frequency not allocated to such use.

(c) Applications considered defective under paragraph (a) of this section may be accepted for filing if:

(1) The application is accompanied by a request which sets forth the reasons in support of a waiver of (or an exception to), in whole or in part, any specific rule, regulation, or requirement with which the application is in conflict; or

(2) The Commission, upon its own motion, waives (or allows an exception to), in whole or in part, any rule, regulation or requirement.

(d) If an applicant is requested by the Commission to file any documents or any supplementary or explanatory information not specifically required in the prescribed application form, a failure to comply with such request within a specified time period will be deemed to render the application defective and will subject it to dismissal.

[44 FR 60534, Oct. 19, 1979, as amended at 52 FR 5294, Feb. 20, 1987; 52 FR 37779, Oct. 9, 1987; 55 FR 46009, Oct. 31, 1990; 58 FR 11797, Mar. 1, 1993; 61 FR 26674, May 28, 1996]

§ 21.21 Inconsistent or conflicting applications.

While an application is pending and undecided, no subsequent inconsistent or conflicting application may be filed by the same applicant, the applicant's successor or assignee, or on behalf or for the benefit of the same applicant, the applicant's successor or assignee.

[44 FR 60534, Oct. 19, 1979, as amended at 52 FR 37779, Oct. 9, 1987]

§ 21.22 Repetitious applications.

(a) Where an applicant has been afforded an opportunity for a hearing with respect to a particular application for a new station, or for an extension or enlargement of a service or facilities, and the Commission has, after hearing or default, denied the application or dismissed it with prejudice, the Commission will not consider a like application involving service of the same kind to the same area by the same applicant, or by the applicant's successor or assignee, or on behalf of or for the benefit of the original parties in interest, until after the lapse of 12 months from the effective date of the Commission's order. The Commission may, for good cause shown, waive the requirements of this section.

(b) Where an appeal has been taken from the action of the Commission denying a particular application, another application for the same class of station and for the same area, in whole or in part, filed by the same applicant or by the applicant's successor or assignee, or on behalf or for the benefit of the original parties in interest, will not be considered until the final disposition of such appeal.

[44 FR 60534, Oct. 19, 1979, as amended at 52 FR 37779, Oct. 9, 1987]

§ 21.23 Amendment of applications.

(a)(1) Any pending application may be amended as a matter of right if the application has not been designated for hearing, or for comparative evaluation pursuant to § 21.35, or for the random selection process, provided, however, that the amendments must comply with the provisions of § 21.29 as appropriate and the Commission has not otherwise forbidden the amendment of pending applications.

(2) A Multipoint Distribution Service application tentatively selected for qualification review by the random selection process may be amended as a matter of right up to 14 days after the date of the public notice announcing the tentative selection, provided, however, that the amendments must comply with the provisions of § 21.29 as appropriate and the Commission has not otherwise forbidden the amendment of pending applications.

(3) Provided, however, applications may not be amended if the amendments seek more than a *pro forma* change of ownership or control (bankruptcy, death or legal disability) of a pending Multipoint Distribution Service application and any amendment or application will be dismissed if the amendment or application seeks more than a *pro forma* change of ownership or control.

(b) Requests to amend an application designated for hearing or for comparative evaluation or for tentative selection for qualification review by the random selection process may be granted only if a written petition demonstrating good cause is submitted and properly served on the parties of record, except that Multipoint Distribution Service applications tentatively selected in a random selection process may be amended as a matter of right as provided in paragraph (a) of this section. Provided, however, requests to amend applications will not be granted that seek more than a *pro forma* change of ownership or control (bankruptcy, death or legal disability) of a pending Multipoint Distribution Service application and any application seeking more than a *pro forma* change of ownership or control will be dismissed.

(c) The Commission will classify amendments on a case-by-case basis. Whenever previous amendments have been filed, the most recent amendment will be classified by reference to how the information in question stood as of the latest Public Notice issued which concerned the application. An amendment will be deemed to be a major amendment subject to § 21.27 and § 21.31 under any of the following circumstances:

(1) If in the Multipoint Distribution Service, the amendment results in a substantial modification of the engineering proposal such as (but not necessarily limited to):

(i) A change in, or addition of, a radio frequency channel;

(ii) A change in polarization of the transmitted signal;

(iii) A change in type of transmitter emission or an increase in emission bandwidth of more than ten (10) percent;

(iv) A change in the geographic coordinates of a station's transmitting antenna of more than ten (10) seconds of latitude or longitude, or both;

(v) Any change which increases the antenna height by 3.0 meters (10 feet) or more;

(vi) Any technical change which would increase the effective radiated power in any horizontal or vertical direction by more than one and one-half (1.5) dB; or

(vii) Any changes or combination of changes which would cause harmful electrical interference to an authorized facility or result in a mutually exclusive conflict with another pending application.

(2) Except during the sixty (60) day amendment period provided for in §21.27(d), any amendment to an application for a new or modified response station hub, booster station or point-to-multipoint I channel(s) station or to an application for a modified main station that reflects any change in the technical specifications of the proposed facility, includes any new or modified analysis of potential interference to another facility or submits any interference consent from a neighboring licensee, shall result in the application being assigned a new file number and being treated as newly filed.

(3) If the amendment would convert a proposal, such that it may have a significant impact upon the environment under §1.1307 of the Commission's rules, which would require the submission of an environmental assessment, see §1.1311 of this chapter, and Commission environmental review, *see* §§1.1308 and 1.1312 of this chapter.

(4) If the amendment results in a substantial and material alteration of the proposed service.

(5) If the amendment specifies a substantial change in benefical ownership or control (*de jure* or *de facto*) of an applicant such that the change would require, in the case of an authorized station, the filing of a prior assignment or transfer of control application under section 310(d) of the Communications Act of 1934 [47 U.S.C. 310(d)]. Such a change would not be considered major where the assignment or transfer of control is for legitimate business purposes other than the acquisition of applications.

(6) If the amendment, or the cumulative effect of the amendment, is determined by the Commission otherwise to be substantial pursuant to section 309 of the Communications Act of 1934.

(d) The applicant must serve copies of any amendments or other written communications upon the following parties:

(1) Any applicant whose application appears on its face to be mutually exclusive with the application being amended, including those applicants originally served under §21.902;

(2) Any applicant whose application has been found by the Commission, as published in a public notice, to be mutually exclusive with the application being amended; and

(3) Any party who has filed a petition to deny the application or other formal objection, when that petition or formal objection has not been resolved by the Commission.

(e) The Commission may waive the service requirements of paragraph (e) of this section and prescribe such alternative procedures as may be appropriate under the circumstances to protect petitioners' interests and to avoid undue delay in a proceeding, if an applicant submits a request for waiver which demonstrates that the service requirement is unreasonably burdensome. Requests for waiver shall be served on petitioners. Oppositions to the petition may be filed within five (5) days after the petition is filed and shall be served on the applicant. Replies to oppositions will not be entertained.

(f) Any amendment to an application shall be signed and shall be submitted in the same manner, and with the same number of copies, as was the original application. Amendments may be made

in letter form if they comply in all other respects with the requirements of this chapter.

[44 FR 60534, Oct. 19, 1979, as amended at 46 FR 23450, Apr. 27, 1981; 50 FR 5992, Feb. 13, 1985; 50 FR 45614, Nov. 1, 1985; 52 FR 37779, Oct. 9, 1987; 55 FR 20397, May 16, 1990; 56 FR 57816, Nov. 14, 1991; 58 FR 11797, Mar. 1, 1993; 58 FR 44894, Aug. 25, 1993; 61 FR 26674, May 28, 1996; 64 FR 63730, Nov. 22, 1999; 65 FR 46617, July 31, 2000]

§ 21.24 [Reserved]

§ 21.25 Application for temporary authorizations.

(a) In circumstances requiring immediate or temporary use of facilities, request may be made for special temporary authority to install and/or operate new or modified equipment. Any such request may be submitted as an informal application in the manner set forth in §21.5 and must contain full particulars as to the proposed operation including all facts sufficient to justify the temporary authority sought and the public interest therein. No such request will be considered unless the request is received by the Commission at least 10 days prior to the date of proposed construction or operation or, where an extension is sought, expiration date of the existing temporary authorization.

(b) Special temporary authorizations may be granted without regard to the 30-day public notice requirement of §21.27(c) when:

(1) The authorization is for a period not to exceed 30 days and no application for regular application is contemplated to be filed;

(2) The authorization is for a period not to exceed 60 days pending the filing of an application for such regular operation;

(3) The authorization is to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as previously authorized; or

(4) The authorization is made upon a finding that there are extraordinary circumstances requiring operation in the public interest and that delay in the institution of such service would seriously prejudice the public interest.

(c) Temporary authorization of operations not to exceed 180 days may be granted under the standards of section 309(f) of the Communications Act where extraordinary circumstances so require. Extensions of the temporary authorization for a period of 180 days each may also be granted, but the renewal applicant bears a heavy burden to show that extraordinary circumstances warrant such an extension.

(d) In cases of emergency found by the Commission, involving danger to life or property or due to damage of equipment, or during a national emergency proclaimed by the President or declared by the Congress or during the continuance of any war in which the United States is engaged and when such action is necessary for the national defense or safety or otherwise in furtherance of the war effort, or in cases of emergency where the Commission finds that it would not be feasible to secure renewal applications from existing licensees or otherwise to follow normal licensing procedure, the Commission will grant construction permits and station licenses, or modifications or renewals thereof, during the emergency found by the Commission or during the continuance of any such national emergency or war, as special temporary licenses, only for the period of emergency or war requiring such action, without the filing of formal applications.

[44 FR 60534, Oct. 19, 1979, as amended at 48 FR 27252, June 14, 1983; 52 FR 37779, Oct. 9, 1987]

PROCESSING OF APPLICATIONS

§ 21.26 Receipt of applications.

Applications received by the Commission are given a file number for administrative convenience, which does not indicate the acceptance of the application for filing and processing. After preliminary review those applications covered by §21.27(a) that appear complete will be put on public notice as accepted for filing. Neither the assignment of a file number nor the listing of the application on public notice as accepted for filing indicates that the application has been found acceptable for filing or precludes the subsequent return or dismissal of the application if

it is found to be defective or not in substantial compliance with the Commission's rules.

[52 FR 37779, Oct. 9, 1987]

§ 21.27 Public notice period.

(a) At regular intervals, the Commission will issue a public notice listing:

(1) The acceptance for filing of applications and major amendments thereto;

(2) Significant Commission actions concerning applications;

(3) The filing of certifications of completion of construction;

(4) The receipt of applications for minor modifications made pursuant to § 21.41;

(5) Information which the Commission in its discretion believes of public significance; and

(6) Special environmental considerations as required by part 1 of this chapter.

(7) The BTAs designated for licensing through the competitive bidding process and the filing date for short-form applications for those areas;

(8) The auction winners in the competitive bidding process;

(b) A public notice will not normally be issued for any of the following applications:

(1) For authorization of a minor technical change in the facilities of a proposed or authorized station where such a change would not be classified as a major amendment to a pending application, as defined by § 21.23, or as a minor modification to a license pursuant to § 21.41;

(2) For temporary authorization pursuant to § 21.25;

(3) For an authorization under any of the proviso clauses of section 308(a) of the Communications Act of 1934 (47 U.S.C. 308(a));

(4) For consent to an involuntary assignment or transfer of control of a radio authorization; or

(5) For consent to a voluntary assignment or transfer of control of a radio authorization, where the assignment or transfer does not involve a substantial change in ownership or control.

(c) Except as otherwise provided in this part (e.g., § 21.41), no application that has appeared on public notice will be granted until the expiration of a period of thirty days following the issuance of the public notice listing the application, or any major amendment thereto, or until the expiration of a period of thirty days following the issuance of a public notice identifying the tentative selectee of a random selection process, whichever is later.

(d) Notwithstanding any other provisions of this part, effective as of September 17, 1998, there shall be one one-week window, at such time as the Commission shall announce by public notice, for the filing of applications for high-power signal booster station, response station hub and I channels point-to-multipoint transmissions licenses, during which all applications shall be deemed to have been filed as of the same day for purposes of §§ 21.909, 21.913 and 74.939(l) of this chapter. Following the publication of a public notice announcing the tendering for filing of applications submitted during that window, applicants shall have a period of sixty (60) days to amend their applications, provided such amendments do not result in any increase in interference to any previously proposed or authorized station, or to facilities proposed during the window, absent consent of the applicant for or conditional licensee or licensee of the station that would receive such interference. At the conclusion of that sixty (60) day period, the Commission shall publish a public notice announcing the acceptance for filing of all applications submitted during the initial window, as amended during the sixty (60) day period. All petitions to deny such applications must be filed within sixty (60) days of such second public notice. On the sixty-first (61st) day after the publication of such second public notice, applications for new or modified response station hub, booster station and I channels point-to-multipoint transmissions licenses may be filed and will be processed in accordance with the provisions of §§ 21.909, 21.913 and 74.939(l) of this chapter. Notwithstanding § 21.31, each application submitted during the initial window shall be granted on the sixty-first (61st) day after the Commission shall have given such public notice of its acceptance for filing, unless prior to such date either a party in interest timely files a formal petition to deny

or for other relief pursuant to §21.30(a), or the Commission notifies the applicant that its application will not be granted. Where an application is granted pursuant to the provisions of this paragraph, the conditional licensee or licensee shall maintain a copy of the application at the transmitter site or response station hub until such time as the Commission issues a license.

[52 FR 37779, Oct. 9, 1987, as amended at 54 FR 10327, Mar. 13, 1989; 60 FR 36552, July 17, 1995; 61 FR 26674, May 28, 1996; 63 FR 65101, Nov. 25, 1998; 64 FR 4054, Jan. 27, 1999]

§21.28 Dismissal and return of applications.

(a) Except as provided under paragraph (c) of this section and under §21.29, any application may be dismissed without prejudice as a matter of right if the applicant requests its dismissal prior to designation for hearing or prior to selection of the comparative evaluation procedure of §21.35. An applicant's request for return of its application after it has been accepted for filing will be considered to be a request for dismissal without prejudice. Requests for dismissal shall comply with the provisions of §21.29 as appropriate.

(b) A request to dismiss an application without prejudice will be considered after designation for hearing, after selection of the comparative evaluation procedure of §21.35, or after selection as a tentative selectee in a random selection proceeding, only if:

(1) A written petition is submitted to the Commission and, in the case of applications designated for hearing or comparative evaluation, is properly served upon all parties of record;

(2) The petition is submitted before the issuance date of a public notice of Commission action denying the application; and

(3) The petition complies with the provisions of §21.29 (whenever applicable) and demonstrates good cause.

(c) Except as provided under §21.29, an application designated for inclusion in the random selection process may be dismissed without prejudice as a matter of right if the applicant requests its dismissal at least 2 days prior to a random selection proceeding. An applicant's request for return of its application after it has been accepted for filing will be considered to be a request for dismissal without prejudice. Requests for dismissal shall comply with the provisions of §21.29 as appropriate.

(d) The Commission will dismiss an application for failure to prosecute or for failure to respond substantially within a specified time period to official correspondence or requests for additional information. Dismissal will be without prejudice prior to designation for hearing, selection of the comparative evaluation procedure of §21.35, or tentative selection by the random selection process, but may be with prejudice for unsatisfactory compliance with §21.29, or after designation for hearing, selection of the comparative evaluation process, or selection as a tentative selectee in a random selection proceeding.

(e) The Commission will dismiss an application filed by a cable television company which fails to comply with the provisions of §21.912 of this part.

(f) A Multipoint Distribution Service application will be dismissed if the applicant seeks to change ownership or control, except in the case of a *pro forma* change of ownership or control (bankruptcy, death, or legal disability).

[44 FR 60534, Oct. 19, 1979, as amended at 50 FR 5993, Feb. 13, 1985; 55 FR 46009, Oct. 31, 1990; 58 FR 11797, Mar. 1, 1993]

§21.29 Ownership changes and agreements to amend or to dismiss applications or pleadings.

(a) Except as provided in paragraph (b) of this section, applicants or any other parties in interest to pending applications shall comply with the provisions of this section whenever:

(1) They participate in any agreement (or understanding) which involves any consideration promised or received, directly or indirectly, including any agreement (or understanding) for merger of interests or the reciprocal withdrawal of applications; and

(2) The agreement (or understanding) may result in either:

(i) A proposed substantial change in beneficial ownership or control *(de jure* or *de facto)* of an applicant such that the change would require, in the case of an authorized station, the filing of a

prior assignment or transfer of control application under section 310(d) of the Communications Act of 1934 [47 U.S.C. 310(d)], or

(ii) Proposed withdrawal, amendment or dismissal of any application(s), amendment(s), petition(s), pleading(s), or any combination thereof, which would thereby permit the grant without hearing, comparative evaluation under of §21.35, or random selection of an application previously in contested status.

(b) The provisions of this section shall not be applicable to any engineering agreement (or understanding) which:

(1) Resolves frequency conflicts with authorized stations or other pending applications without the creation of new or increased frequency conflicts; and

(2) Does not involve any consideration promised or received, directly or indirectly (including any merger of interests or reciprocal withdrawal of applications), other than the mutual benefit of resolving the engineering conflict.

(c) For any agreement subject to this section, the applicant of an application which would remain pending pursuant to such an agreement will be considered responsible for the compliance by all parties with the procedures of this section. Failure of the parties to comply with the procedures of this section shall constitute a defect in those applications which are involved in the agreement and remain in a pending status.

(d) The principals to any agreement or understanding subject to this section shall comply with the standards of paragraph (e) of this section in accordance with the following procedure:

(1) Within ten (10) days after entering into the agreement, the parties thereto shall jointly notify the Commission in writing of the existence and general terms of such agreement, the identity of all of the participants and the applications involved;

(2) Within thirty (30) days after entering into the agreement, the parties thereto shall file any proposed application amendments, motions, or requests together with a copy of the agreement which clearly sets forth all terms and provisions, and such other facts and information as necessary to satisfy the standards of paragraph (e) of this section. Such submission shall be accompanied by the certification by affidavit of each principal to the agreement declaring that the statements made are true, complete, and correct to the best of their knowledge and belief, and are made in good faith.

(3) The Commission may request any further information which in its judgment it believes is necessary for a determination under paragraph (e) of this section.

(e) The Commission will grant an application (or applications) involved in the agreement (or understanding) only if it finds upon examination of the information submitted, and upon consideration of such other matters as may be officially noticed, that the agreement is consistent with the public interest, and the amount of any monetary consideration and the cash value of any other consideration promised or received is not in excess of those legitimate and prudent costs directly assignable to the engineering, preparation, filing and advocacy of the withdrawn, dismissed, or amended application(s), amendment(s), petition(s), pleading(s), or any combination thereof. Where such costs represent the applicant's in-house efforts, these costs shall include only directly assignable costs and shall exclude general overhead expenses. [The treatment to be accorded such consideration for interstate rate making purposes will be determined at such time as the question may arise in an appropriate rate proceeding.] An itemized accounting shall be submitted to support the amount of consideration involved except where such consideration (including the fair market value of any non-cash consideration) promised or received does not exceed one thousand dollars ($1,000.00). Where consideration involves a sale of facilities or merger of interests, the accounting shall clearly identify that portion of the consideration allocated for such facilities or interests and a detailed description thereof, including estimated fair market value. The Commission will not presume an agreement (or understanding) to be prima facie contrary to the public interest solely because it

incorporates a mutual agreement to withdraw pending application(s), amendment(s), petition(s), pleading(s), or any combination thereof.

(f) Notwithstanding §21.29(e), amendments will not be granted that seek more than a *pro forma* change of ownership or control (bankruptcy, death, or legal disability) of a pending Multipoint Distribution Service application, and any Multipoint Distribution Service application will be dismissed that seeks more than a *pro forma* change of ownership or control.

[44 FR 60534, Oct. 19, 1979, as amended at 50 FR 5993, Feb. 13, 1985; 58 FR 11797, Mar. 1, 1993]

§ 21.30 Opposition to applications.

(a) Petitions to deny (including petitions for other forms of relief) and responsive pleadings for Commission consideration must:

(1) Identify the application or applications (including applicant's name, station location, Commission file numbers and radio service involved) with which it is concerned;

(2) Be filed in accordance with the pleading limitations, filing periods, and other applicable provisions of §§1.41 through 1.52, and 1.821 through 1.825;

(3) Contain specific allegations of fact (except for those of which official notice may be taken), which shall be supported by affidavit of a person or persons with personal knowledge thereof, and which shall be sufficient to demonstrate that the petitioner (or respondent) is a party in interest and that a grant of, or other Commission action regarding, the application would be prima facie inconsistent with the public interest;

(4) Except as provided in §21.902(i)(6) regarding Instructional Television Fixed Service licensees and conditional licensees, in §21.909 regarding MDS response station hubs and in §21.913 regarding MDS booster stations, be filed within thirty (30) days after the date of public notice announcing the acceptance for filing of any such application or major amendment thereto, or identifying the tentative selectee of a random selection proceeding in the Multichannel Multipoint Distribution Service or for Multipoint Distribution Service H-channel stations (unless the Commission otherwise extends the filing deadline); and

(5) Contains a certificate of service showing that it has been mailed to the applicant no later than the date of filing thereof with the Commission.

(b) The Commission will classify as informal objections:

(1) Any petition to deny not filed in accordance with paragraph (a) of this section;

(2) Any petition to deny (or for other forms of relief) an application to which the thirty (30) day public notice period of §21.27(c) does not apply; or

(3) Any comments on, or objections to, the grant of an application when the comments or objections do not conform to either paragraph (a) of this section or other Commission rules and requirements.

(c) The Commission will consider informal objections, but will not necessarily discuss them specifically in a formal opinion if:

(1) The informal objection is filed at least one day before Commission action on the application; and

(2) The informal objection is signed by the submitting person (or his representative) and discloses his interest.

[44 FR 60534, Oct. 19, 1979, as amended at 50 FR 5993, Feb. 13, 1985; 50 FR 45614, Nov. 1, 1985; 52 FR 37779, Oct. 9, 1987; 55 FR 46009, Oct. 31, 1990; 56 FR 57816, Nov. 14, 1991; 63 FR 65101, Nov. 25, 1998]

§ 21.31 Mutually exclusive applications.

(a) Except with respect to applications for new or modified response stations hubs, booster stations, and point-to-multipoint I channel stations, and to applications for modified main stations, filed on the same day or during the same window, the Commission will consider applications to be mutually exclusive if their conflicts are such that grant of one application would effectively preclude by reason of harmful electrical interference, or other practical reason, the grant of one or more of the other applications.

(b) An application will be entitled to be included in a random selection process or to comparative consideration with one or more conflicting applications only if:

(1) The application is mutually exclusive with the other application; and

(2) The application is received by the Commission in a condition acceptable for filing by whichever ''cut-off'' date is earlier:

(i) Sixty (60) days after the date of the public notice listing the first of the conflicting applications as accepted for filing; or

(ii) One (1) business day preceding the day on which the Commission takes final action on the previously filed application (should the Commission act upon such application in the interval between thirty (30) and sixty (60) days after the date of its public notice).

(c) Whenever three or more applications are mutually exclusive, but not uniformly so, the earliest filed application established the date prescribed in paragraph (b)(2) of this section, regardless of whether or not subsequently filed applications are directly mutually exclusive with the first filed application. [For example, applications A, B, and C are filed in that order. A and B are directly mutually exclusive, B and C are directly mutually exclusive. In order to be considered comparatively with B, C must be filed within the ''cut-off'' period established by A even though C is not directly mutually exclusive with A.]

(d) An application otherwise mutually exclusive with one of more previously filed applications, but filed after the appropriate date prescribed in paragraph (b)(2) of this section, will be returned without prejudice and will be eligible for refiling only after final action is taken by the Commission with respect to the previously filed application (or applications).

(e) For the purposes of this section, any application (whether mutually exclusive or not) will be considered to be a newly filed application if it is amended by a major amendment (as defined by §21.23), except under any of the following circumstances:

(1) The application has been designated for comparative hearing, or for comparative evaluation (pursuant to §21.35), and the Commission or the presiding officer accepts the amendment pursuant to §21.23(b);

(2) The amendment resolves frequency conflicts with authorized stations or other pending applications which would otherwise require resolution by hearing, by comparative evaluation pursuant to §21.35, or by random selection pursuant to §21.33 provided that the amendment does not create new or additional frequency conflicts;

(3) The amendment reflects only a change in ownership or control found by the Commission to be in the public interest, and for which a requested exemption from the ''cut-off'' requirements of this section is granted, unless the amendment is for more than a *pro forma* change of ownership or control (bankruptcy, death or legal disability) of a pending Multipoint Distribution Service application in which event the application will be dismissed;

(4) The amendment reflects only a change in ownership or control which results from an agreement under §21.29 whereby two or more applicants entitled to comparative consideration of their applications join in one (or more) of the existing applications and request dismissal of their other application (or applications) to avoid the delay and cost of comparative consideration, unless the amendment is for one (or more) pending Multipoint Distribution Service application (or applications) in which event the application (or applications) will be dismissed;

(5) The amendment corrects typographical, transcription, or similar clerical errors which are clearly demonstrated to be mistakes by reference to other parts of the application, and whose discovery does not create new or increased frequency conflicts; or

(6) The amendment does not create new or increased frequency conflicts, and is demonstrably necessitated by events which the applicant could not have reasonably foreseen at the time of filing, such as, for example:

(i) The loss of a transmitter or receiver site by condemnation, natural causes, or loss of lease or option;

(ii) Obstruction of a proposed transmission path caused by the erection of a new building or other structure; or

(iii) The discontinuance or substantial technological obsolescence of specified equipment, whenever the application has been pending before the Commission for two or more years from the date of its filing.

[44 FR 60534, Oct. 19, 1979, as amended at 45 FR 65600, Oct. 3, 1980; 45 FR 70468, Oct. 24, 1980; 50 FR 5993, Feb. 13, 1985; 52 FR 27554, July 22, 1987; 52 FR 37780, Oct. 9, 1987; 55 FR 10462, Mar. 21, 1990; 58 FR 11797, Mar. 1, 1993; 61 FR 26674, May 28, 1996; 63 FR 65101, Nov. 25, 1998; 64 FR 63730, Nov. 22, 1999; 65 FR 46617, July 31, 2000]

§ 21.32 Consideration of applications.

(a) Applications for an instrument of authorization will be granted if, upon examination of the application and upon consideration of such other matters as it may officially notice, the Commission finds that the grant will serve the public interest, convenience, and necessity.

(b) The grant shall be without a formal hearing if, upon consideration of the application, any pleadings of objections filed, or other matters which may be officially noticed, the Commission finds that:

(1) The application is acceptable for filing, and is in accordance with the Commission's rules, regulations, and other requirements;

(2) The application is not subject to comparative consideration (pursuant to §21.31) with another application (or applications), except where the competing applicants have chosen the comparative evaluation procedure of §21.35 and a grant is appropriate under that procedure;

(3) A grant of the application would not cause harmful electrical interference to an authorized station;

(4) There are no substantial and material questions of fact presented; and

(5) The applicant is legally, technically, financially and otherwise qualified, and a grant of the application would serve the public interest.

(c) If the Commission should grant without a formal hearing an application for an instrument of authorization which is subject to a petition to deny filed in accordance with §21.30, the Commission will deny the petition by the issuance of a Memorandum Opinion and Order which will concisely report the reasons for the denial and dispose of all substantial issues raised by the petition.

(d) Whenever the Commission, without a formal hearing, grants any application in part, or subject to any terms or conditions other than those normally applied to applications of the same type, it shall inform the applicant of the reasons therefor, and the grant shall be considered final unless the Commission should revise its action (either by granting the application as originally requested, or by designating the application for a formal evidentiary hearing) in response to a petition for reconsideration which:

(1) Is filed by the applicant within thirty (30) days from the date of the letter or order giving the reasons for the partial or conditioned grant;

(2) Rejects the grant as made and explains the reasons why the application should be granted as originally requested; and

(3) Returns the instrument of authorization.

(e) The Commission will designate an application for a formal hearing, specifying with particularity the matters and things in issue, if, upon consideration of the application, any pleadings or objections filed, or other matters which may be officially noticed, the Commission determines that:

(1) A substantial and material question of fact is presented;

(2) The Commission is unable for any reason to make the findings specified in paragraph (a) of this section and the application is acceptable for filing, complete, and in accordance with the Commission's rules, regulations, and other requirements.

(3) The application is entitled to comparative consideration (under §21.31) with another application (or applications); or

(4) The application is entitled to comparative consideration (pursuant to §21.31) and the applicants have chosen the comparative evaluation procedure of §21.35 but the Commission deems such procedure to be inappropriate.

(f) The Commission may grant, deny, or take other action with respect to an application designated for a formal

hearing pursuant to paragraph (e) of this section or part 1 of this chapter.

(g) Whenever the public interest would be served thereby the Commission may grant one or more mutually exclusive applications expressly conditioned upon final action on the applications, and then either conduct a random section process (in specified services under this rules part), designate all of the mutually exclusive applications for a formal evidentiary hearing or (whenever so requested) follow the comparative evaluation procedures of § 21.35, as appropriate, if it appears:

(1) That some or all of the applications were not filed in good faith, but were filed for the purpose of delaying or hindering the grant of another application;

(2) That the public interest requires the prompt establishment of radio service in a particular community or area;

(3) That a delay in making a grant to any applicant until after the conclusion of a hearing or a random selection proceeding on all applications might jeopardize the rights of the United States under the provision of an international agreement to the use of the frequency in question; or

(4) That a grant of one application would be in the public interest in that it appears from an examination of the remaining applications that they cannot be granted because they are in violation of provisions of the Communications Act, other statutes, or of the provisions of this chapter.

(h) Reconsideration or review of any final action taken by the Commission will be in accordance with subpart A of part 1 of this chapter.

[44 FR 60534, Oct. 19, 1979, as amended at 50 FR 5993, Feb. 13, 1985]

§ 21.33 Grants by random selection.

(a) If an application for an authorization for a Multichannel Multipoint Distribution Service (MMDS) station or for a Multipoint Distribution Service (MDS) H-channel station is mutually exclusive with another such application, and satisfies the requirements of §§ 21.31 and 21.914, the applicant may be included in the random selection process set forth in §§ 1.821, 1.822 and 1.824 of this chapter.

(b) Renewal applications shall not be included in a random selection process.

(c) If Multipoint Distribution Service applicants enter into settlements, the applicants in the settlement must be represented by one application only and will not receive the cumulative number of chances in the random selection process that the individual applicants would have had if no settlement had been reached.

[58 FR 11798, Mar. 1, 1993, as amended at 61 FR 26674, May 28, 1996]

§ 21.34 [Reserved]

§ 21.35 Comparative evaluation of mutually exclusive applications.

(a) In order to expedite action on mutually exclusive applications in services under this rules part where the competitive bidding process or random selection process do not apply, the applicants may request the Commission to consider their applications without a formal hearing in accordance with the summary procedure outlined in paragraph (b) in this section if:

(1) The applications are entitled to comparative consideration pursuant to § 21.31;

(2) The applications have not been designated for formal evidentiary hearing; and

(3) The Commission determines, initially or at any time during the procedure outlined in paragraph (b) of this section, that such procedure is appropriate, and that, from the information submitted and consideration of such other matters as may be officially noticed, there are no substantial and material questions of fact presented (other than those relating to the comparative merits of the applications) which would preclude a grant under paragraphs (a) and (b) of § 21.32.

(b) Provided that the conditions of paragraph (a) of this section are satisfied, applicants may request the Commission to act upon their mutually exclusive applications without a formal hearing pursuant to the summary procedure outlined below:

(1) To initiate the procedure, each applicant will submit to the Commission a written statement containing:

(i) A waiver of the applicant's right to a formal hearing;

(ii) A request and agreement that, in order to avoid the delay and expense of a comparative formal hearing, the Commission should exercise its judgment to select from among the mutually exclusive applications that proposal (or proposals) which would best serve the public interest; and

(iii) The signature of a principal (and the principal's attorney if represented).

(2) After receipt of the written requests of all of the applicants the Commission (if it deems this procedure appropriate) will issue a notice designating the comparative criteria upon which the applications are to be evaluated and will request each applicant to submit, within a specified period of time, additional information concerning the applicant's proposal relative to the comparative criteria.

(3) Within thirty (30) days following the due date for filing this information, the Commission will accept concise and factual argument on the competing proposals from the rival applicants, potential customers, and other knowledgeable parties in interest.

(4) Within fifteen (15) days following the due date for the filing of comments, the Commission will accept concise and factual replies from the rival applicants.

(5) From time to time during the course of this procedure the Commission may request additional information from the applicants and hold informal conferences at which all competing applicants shall have the right to be represented.

(6) Upon evaluation of the applications, the information submitted, and such other matters as may be officially noticed the Commission will issue a decision granting one (or more) of the proposals which it concludes would best serve the public interest, convenience and necessity. The decision will report briefly and concisely the reasons for the Commission's selection and will deny the other application(s). This decision shall be considered final.

[44 FR 60534, Oct. 19, 1979, as amended at 50 FR 5994, Feb. 13, 1985; 52 FR 37780, Oct. 9, 1987; 60 FR 36552, July 17, 1995]

§§ 21.36–21.37 [Reserved]

LICENSE TRANSFERS, MODIFICATIONS, CONDITIONS AND FORFEITURES

§ 21.38 Assignment or transfer of station authorization.

(a) No station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation or any other entity holding any such license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience and necessity will be served thereby.

(b) For purposes of this section, transfers of control requiring Commission approval shall include any and all transactions that:

(1) Change the party controlling the affairs of the licensee, or

(2) Affect any change in a controlling interest in the ownership of the licensee, including changes in legal or equitable ownership, or

(c) Requests for transfer of control or assignment authority shall be submitted on the application form prescribed by §21.11 of this chapter, and shall be accompanied by the applicable showings required by §§21.13, 21.15, 21.17 and 21.39 of this chapter.

(d) The Commission shall be promptly notified in writing when a licensee is voluntarily or involuntarily placed in bankruptcy or receivership and when an individual licensee, a member of a partnership which is a licensee, or a person directly or indirectly in control of a corporation which is a licensee, dies or becomes legally disabled. Within thirty days after the occurrence of such bankruptcy, receivership, death or legal disability, an application of involuntary assignment of such license, or involuntary transfer of control of such corporation, shall be filed with the Commission, requesting assignment or transfer to a successor legally qualified under the laws of the place having jurisdiction over the assets involved.

(e) The assignor of a station licensed under this part may retain no right of

reversion or reassignment of the license and may not reserve the right to use the facilities of the station for any period whatsoever. No assignment of license will be granted or authorized if there is a contract or understanding, express or implied, pursuant to which a right of reversion or reassignment of the license or right to use the facilities are retained as partial or full consideration for the assignment or transfer.

(f) No special temporary authority, or any rights thereunder, shall be assigned or otherwise disposed of, directly or indirectly, voluntarily or involuntarily, without prior Commission approval.

(g) An applicant for voluntary transfer of control or assignment under this section where the subject license was acquired by the transferor or assignor through a system of random selection shall, together with its application for transfer of control or assignment, file with the Commission the associated contracts for sale, option agreements, management agreements, or other documents disclosing the total consideration that the applicant would receive in return for the transfer or assignment of its license. This information should include not only a monetary purchase price, but also any future, contingent, in-kind, or other consideration (e.g., management or consulting contracts either with or without an option to purchase; below-market financing).

[52 FR 37780, Oct. 9, 1987, as amended at 54 FR 11953, Mar. 23, 1989; 59 FR 9101, Feb. 25, 1994]

§ 21.39 Considerations involving transfer or assignment applications.

(a) A Multipoint Distribution Service conditional license may not be assigned or transferred prior to the completion of construction of the facility and the timely filing of the certification of completion of construction. However, consent to the assignment or transfer of control of a Multipoint Distribution Service conditional license may be given prior to the completion of construction and the timely filing of the certification of completion of construction where:

(1) The assignment or transfer does not involve a substantial change in ownership or control of the authorized Multipoint Distribution Service facilities; or

(2) The assignment or transfer of control is involuntary due to the licensee's bankruptcy, death, or legal disability.

(b) The Commission will review a proposed transaction to determine if the circumstances indicate ''trafficking'' in licenses whenever applications (except those involving *pro forma* assignment or transfer of control) for consent to assignment of a license, or for transfer of control of a licensee, involve facilities that were:

(1) Authorized following a comparative hearing and have been operated less than one year, or;

(2) Involve facilities that have not been constructed, or;

(3) Involve facilities that were authorized following a random selection proceeding in which the successful applicant received preference and that have been operated for less than one year.

At its discretion, the Commission may require the submission of an affirmative, factual showing (supported by affidavits of a person or persons with personal knowledge thereof) to demonstrate that the proposed assignor or transferor has not acquired an authorization or operated a station for the principal purpose of profitable sale rather than public service. This showing may include, for example, a demonstration that the proposed assignment or transfer is due to changed circumstances (described in detail) affecting the licensee subsequent to the acquisition of the license, or that the proposed transfer of radio facilities is incidental to a sale of other facilities or merger of interests.

(c) If a proposed transfer of radio facilities is incidental to a sale of other facilities or merger of interests, any showing requested under paragraph (a) of this section shall include an additional exhibit which:

(1) Discloses complete details as to the sale of facilities or merger of interests;

(2) Segregates clearly by an itemized accounting, the amount of consideration involved in the sale of facilities or merger of interests; and

(3) Demonstrates that the amount of consideration assignable to the facilities or business interests involved represents their fair market value at the time of the transaction.

(d) For the purposes of this section, the one year period is calculated using the following dates (as appropriate):

(1) The initial date of grant of the license, excluding subsequent modifications;

(2) The date of consummation of an assignment or transfer, if the station is acquired as the result of an assignment of license, or transfer of control of corporate licensee; or

(3) The median date of the applicable commencement dates (determined pursuant to paragraphs (c) (1) and (2) of this section) if the transaction involves two or more stations. (The median date is that date so selected such that fifty percent of the commencement dates of the total number of stations, when arranged in chronological order, lie below it and fifty percent lie above it. When the number of stations is an even number, the median date will be a value half way between the two dates closest to the theoretical median).

[44 FR 60534, Oct. 19, 1979, as amended at 48 FR 33900, July 26, 1983; 50 FR 5994, Feb. 13, 1985; 52 FR 27554, July 22, 1987. Redesignated and amended at 52 FR 37780, Oct. 9, 1987; 58 FR 11798, Mar. 1, 1993; 61 FR 26674, May 28, 1996]

§ 21.40 Modification of station license.

(a) Except as provided in §§ 21.41 and 21.42, no modification of a license issued pursuant to this part (or the facilities described thereunder) shall be made except upon application to the Commission and upon finding by the Commission that:

(1) Such modification will promote the public interest, convenience and necessity, or

(2) That the provisions of the Communications Act of 1934 or of any treaty ratified by the United States will be more fully complied with if such application is granted.

(b) No application for modification to extend a license construction period will be granted for delays caused by lack of financing or for lack of site availability. Applications for time extensions for other reasons must include a verified statement from the application showing that the licensee has made diligent efforts to construct the facilities and:

(1) That additional time is required due to circumstances beyond the applicant's control, in which case the applicant must describe such circumstances and must set forth with specificity and justify the precise extension period requested; or

(2) That there are unique and overriding public interest concerns that justify such an extension, in which case the applicant must identify such interests and must set forth and justify a precise extension period.

(c) Notwithstanding the provisions of paragraph (b), when a station license has been assigned or transferred pursuant to § 21.38, any extension of time will be limited so that the time left to construct after Commission grant of the transfer or assignment will be no more than the time remaining for construction at the date of the filing of the application for transfer or assignment.

[52 FR 37780, Oct. 9, 1987]

§ 21.41 Special processing of applications for minor facility modifications.

(a) Unless an applicant is notified to the contrary by the Commission, as of the twenty-first day following the date of public notice, any application that meets the requirements of paragraph (b) of this section and proposes only the change specified in paragraph (c) of this section shall be deemed to have been authorized by the Commission.

(b) An application may be considered under the procedures of this section only if:

(1) It is in the Multipoint Distribution Service;

(2) The cumulative effect of all such applications made within any 60 days period does not exceed the appropriate values prescribed by paragraph (c) of this section;

(3) The facilities to be modified are not located within 56.3 kilometers (35 miles) of the Canadian or Mexican border;

(4) It is acceptable for filing, is consistent with all of the Commission's

rules, and does not involve a waiver request;

(5) It specifically requests consideration pursuant to this section;

(6) Frequency notification procedures are complied with and a copy of the application has been served on those who also were served under §21.902; and

(7) In the Multipoint Distribution Service, the modified facility would not produce a power flux density that exceeds −73 dBW/m², pursuant to §§21.902 and 21.939 at locations on the boundaries of protected service areas to which there is an unobstructed signal path.

(c) The modifications that may be authorized under the procedures of this section are:

(1) Changes in a transmitter and existing transmitter operating characteristics, or protective configuration of transmitter, provided that:

(i) In the Multipoint Distribution Service, any increase in EIRP is one and one-half dB or less over the previously-authorized power value; or

(ii) The necessary bandwidth is not increased by more than 10% of the previously authorized necessary bandwidth.

(2) Changes in the height of an antenna, provided that:

(i) In Multipoint Distribution Service, any increase in antenna height is less than 3.0 meters above the previously authorized height; and

(ii) The overall height of the antenna structure is not increased as a result of the antenna extending above the height of the previously authorized structure, except when the new height of the antenna structure is 6.1 meters or less (above ground or man-made structure, as appropriate) after the change is made.

(3) Change in the geographical coordinates of a transmit station by ten seconds or less of latitude, longitude or both, provided that when notice to the FAA of proposed construction is required by part 17 of this chapter for antenna structure at the previously authorized coordinates (or will be required at the new location) the applicant must comply with the provisions of §21.15(d).

(d) Upon grant of an application under the procedure of this section and at such time that construction begins, the applicant must keep a complete copy of the application (including the filing date) with the station license if construction is commenced prior to the receipt of the authorization.

[52 FR 37780, Oct. 9, 1987, as amended at 55 FR 46009, Oct. 31, 1990; 58 FR 44894, Aug. 25, 1993; 60 FR 36552, July 17, 1995; 61 FR 4364, Feb. 6, 1996; 61 FR 26674, May 28, 1996]

§21.42 Certain modifications not requiring prior authorization.

(a) Equipment in an authorized radio station may be replaced without prior authorization or notification if:

(1) The replacement equipment is identical (i.e., same manufacturer and model number) with the replacement equipment; or

(2) The replacement transmitter, transmitting antenna, transmission line loss and/or devices between the transmitter and antenna, or combinations of the above, do not change the EIRP of a station in any direction.

(b) Licensees of fixed stations in the Multipoint Distribution Service may make the facility changes listed in paragraph (c) of this section without obtaining prior Commission authorization, if:

(1) The Multipoint Distribution Service licensee serves a copy of the notification described in paragraph (b)(3) of this section on those who were served under §21.902, and

(2) The cumulative effect of all facility changes made within any 60 day period does not exceed the appropriate values prescribed by paragraph (c) of this section, and

(3) The Commission is notified of changes made to facilities by the submission of a completed FCC Form 304 within thirty (30) days after the changes are made.

(4) In the Multipoint Distribution Service, the modified facility would not produce a power flux density at the protected service area boundary that exceeds −73 dBW/m², pursuant to §§21.902 and 21.939.

(c) Modifications that may be made without prior authorization under paragraph (b) of this section are:

(1) Change or modification of a transmitter, when:

(i) The replacement or modified transmitter is certificated for use under this part and is installed without modification from the certificated configuration;

(ii) The type of modulation is not changed;

(iii) The frequency stability is equal to or better than the previously authorized frequency stability; and

(iv) The necessary bandwidth and the output power do not exceed the previously authorized values.

(2) Addition or deletion of a transmitter for protection without changing the authorized power output (e.g. hot standby transmitters);

(3) Change to an antenna when the new antenna conforms with §21.906 and the EIRP resulting from the new antenna does not exceed that resulting from the previously authorized antenna by more than one dB in any direction.

(4) Any technical changes that would decrease the effective radiated power.

(5) Change to the height of an antenna, when:

(i) The new height (measured at the center-of-radiation) is within ±1.5 meters (5 feet) of the previously authorized height; and

(ii) The overall height of the antenna structure is not increased as a result of the antenna extending above the height of the previously authorized structure, except when the new height of the antenna structure is 6.1 meters (20 feet) or less (above ground or manmade structure, as appropriate) after the change is made.

(6) Decreases in the overall height of an antenna structure, provided that, when notice to the FAA of proposed construction was required by part 17 of this chapter for the antenna structure at the previously authorized height, the applicant must comply with the provisions of §21.15 (d) and (e).

(7) Changes to the transmission line and other devices between the transmitter and the antenna when the effective radiated power of the station is not increased by more than one dB.

(8) A change to a sectorized antenna system comprising an array of directional antennas, provided that such system does not change polarization or result in an increase in radiated power by more than one dB in any horizontal or vertical direction; provided, however, that notice of such change is provided to the Commission on FCC Form 331 within ten (10) days of installation.

(d) Licensees may correct erroneous information on a license which does not involve a major change (i.e., a change that would be classified as a major amendment as defined by §21.23) without obtaining prior Commission approval by filing a completed FCC Form 494, or for the Multipoint Distribution Service licensees, by filing the MDS long-form application.

[52 FR 37781, Oct. 9, 1987, as amended at 58 FR 44894, Aug. 25, 1993; 60 FR 36552, July 17, 1995; 60 FR 57366, Nov. 15, 1995; 61 FR 4364, Feb. 6, 1996; 61 FR 26674, May 28, 1996; 63 FR 36603, July 7, 1998; 63 FR 49870, Sept. 18, 1998; 63 FR 65101, Nov. 25, 1998; 64 FR 4054, Jan. 27, 1999; 65 FR 46617, July 31, 2000]

§21.43 Period of construction; certification of completion of construction.

(a) Except for Multipoint Distribution Service station licenses granted to BTA and PSA authorization holders, each license for a radio station for the services included in this part shall specify as a condition therein the period during which construction of facilities will be completed and the station made ready for operation. Construction may not commence until the grant of a license, and must be completed by the date specified in the license as the termination date of the construction period. Except as may be limited by §21.45(b) or otherwise determined by the Commission for any particular application, the maximum construction period for all stations licensed under this part shall be a maximum of 12 months from the date of the license grant.

(b) Each license for a radio station for the services included in this part shall also specify as a condition therein that upon the completion of construction, each licensee must file with the Commission a certification of completion of construction using FCC Form 494A, certifying that the facilities as authorized have been completed and that the station is now operational and ready to provide service to the public, and will remain operational during the

license period, unless the license is submitted for cancellation.

[52 FR 37782, Oct. 9, 1987, as amended at 60 FR 36552, July 17, 1995; 61 FR 26675, May 28, 1996]

§ 21.44 Forfeiture and termination of station authorization.

(a) A license shall be automatically forfeited in whole or in part without further notice to the licensee upon:

(1) The expiration of the construction period specified therein, where applicable, or after such additional time as may be authorized by the Commission, unless within 5 days after that date certification of completion of construction has been filed with the Commission pursuant to § 21.43;

(2) The expiration of the license period specified therein, unless prior thereto an application for renewal of such license has been filed with the Commission; or

(3) The voluntary removal or alteration of the facilities, so as to render the station not operational for a period of 30 days or more.

(b) A license forfeited in whole or in part under the provisions of paragraph (a)(1) or (a)(2) may be reinstated if the Commission, in its discretion, determines that reinstatement would best serve the public interest, convenience and necessity. Petitions for reinstatement filed pursuant to this subsection will be considered only if:

(1) The petition is filed within 30 days of the expiration date set forth in paragraph (a)(1) or (a)(2) of this section, whichever is applicable;

(2) The petition explains the failure to timely file such notification or application as would have prevented automatic forfeiture; and

(3) The petition sets forth with specificity the procedures which have been established to insure timely filings in the future.

(c) A special temporary authorization shall automatically terminate upon the expiration date specified therein, or upon failure to comply with any special terms or conditions set forth therein. Operation may be extended beyond such termination date only after application and upon specific authorization by the Commission.

[52 FR 37782, Oct. 9, 1987, as amended at 60 FR 36552, July 17, 1995]

§ 21.45 License period.

(a)(1) Licenses for stations in the Multipoint Distribution Service will be issued for a period not to exceed 10 years, except that licenses for developmental stations will be issued for a period not to exceed one year. The expiration date of developmental licenses shall be one year from the date of the grant thereof. Unless otherwise specified by the Commission, the expiration of regular licenses shall be on the following date in the year of expiration.

Multipoint Distribution Service—May 1.

(2) When a license is granted subsequent to the last renewal date of the class of license involved, the license shall be issued only for the unexpired period of the current license term of such class.

(b) The Commission reserves the right to grant or renew station licenses in these services for a shorter period of time than that generally prescribed for such stations if, in its judgment, public interest, convenience, or necessity would be served by such action.

(c) Upon the expiration or termination of any station license, any related conditional authorization, which bears a later expiration date, shall be automatically terminated concurrently with the related station license, unless it shall have been determined by the Commission that the public interest, convenience or necessity would be served by continuing in effect said conditional authorization.

[44 FR 60534, Oct. 19, 1979, as amended at 46 FR 23450, Apr. 27, 1981; 48 FR 27253, June 14, 1983; 61 FR 26675, May 28, 1996]

§ 21.50 Transition of the 2.11–2.13 and 2.16–2.18 GHz bands from Domestic Public Fixed Radio Services to emerging technologies.

(a) Licensees proposing to implement services using emerging technologies (ET Licensees) may negotiate with Domestic Public Fixed Radio Service licensees (Existing Licensees) in these bands for the purpose of agreeing to terms under which the Existing Licensees would relocate their operations to other fixed microwave bands or to other media, or alternatively, would accept a sharing arrangement with the

ET Licensee that may result in an otherwise impermissible level of interference to the existing licensee's operations. ET Licensees may also negotiate agreements for relocation of the Existing Licensees' facilities within the 2 GHz band in which all interested parties agree to the relocation of the Existing Licensee's facilities elsewhere within these bands. ''All interested parties'' includes the incumbent licensee, the emerging technology provider or representative requesting and paying for the relocation, and any emerging technology licensee of the spectrum to which the incumbent's facilities are to be relocated.

(b) Domestic Public Fixed Radio licensees in bands allocated for licensed emerging technology services will maintain primary status in these bands until two years after the Commission commences acceptance of applications for an emerging technology services, and until one year after an emerging technology service licensee initiates negotiations for relocation of the fixed microwave licensee's operations or, in bands allocated for unlicensed emerging technology services, until one year after an emerging technology unlicensed equipment supplier or representative initiates negotiations for relocation of the fixed microwave licensee's operations. When it is necessary for an emerging technology provider or representative of unlicensed device manufacturers to negotiate with a fixed microwave licensee with operations in spectrum adjacent to that of the emerging technology provider, the transition schedule of the entity requesting the move will apply.

(c) The Commission will amend the operating license of the fixed microwave operator to secondary status only if the following requirements are met:

(1) The service applicant, provider, licensee, or representative using an emerging technology guarantees payment of all relocation costs, including all engineering, equipment, site and FCC fees, as well as any reasonable, additional costs that the relocated fixed microwave licensee might incur as a result of operation in another fixed microwave band or migration to another medium;

(2) The emerging technology service entity completes all activities necessary for implementing the replacement facilities, including engineering and cost analysis of the relocation procedure and, if radio facilities are used, identifying and obtaining, on the incumbents' behalf, new microwave frequencies and frequency coordination; and

(3) The emerging technology service entity builds the replacement system and tests it for comparability with the existing 2 GHz system.

(d) The 2 GHz microwave licensee is not required to relocate until the alternative facilities are available to it for a reasonable time to make adjustments, determine comparability, and ensure a seamless handoff.

(e) If within one year after the relocation to new facilities the 2 GHz microwave licensee demonstrates that the new facilities are not comparable to the former facilities, the emerging technology service entity must remedy the defects or pay to relocate the microwave licensee back to its former or equivalent 2 GHz frequencies.

[58 FR 46549, Sept. 2, 1993, as amended at 59 FR 19645, Apr. 25, 1994]

Subpart C—Technical Standards

§ 21.100 Frequencies.

The frequencies available for use in the service covered by this part are listed in subpart K. Assignment of frequencies will be made only in such a manner as to facilitate the rendition of communication service on an interference-free basis in each service area. Unless otherwise indicated, each frequency available for use by stations in this service will be assigned exclusively to a single applicant in any service area. All applicants for, and licensees of, stations in this service shall cooperate in the selection and use of the frequencies assigned in order to minimize interference and thereby obtain the most effective use of the authorized facilities. In the event harmful interference occurs or appears likely to occur between two or more radio systems and such interference cannot be resolved between the licensees thereof, the Commission may, after notice and

opportunity for hearing, require the licensees to make such changes in operating techniques or equipment as it may deem necessary to avoid such interference.

[61 FR 26675, May 28, 1996]

§ 21.101 Frequency tolerance.

(a) The carrier frequency of each transmitter authorized in these services shall be maintained within the following percentage of the reference frequency except as otherwise provided in paragraph (b) of this section or in the applicable subpart of this part (unless otherwise specified in the instrument of station authorization the reference frequency shall be deemed to be the assigned frequency):

Frequency range (MHz)	Frequency tolerance for fixed stations (percent)
2,150 to 2,162[1][2]	0.001
2,596 to 2,680[2]	0.005

[1] Beginning Aug. 9, 1975, this tolerance will govern the marketing of equipment pursuant to §§ 2.803 and 2.805 of this chapter and the issuance of all authorizations for new radio equipment. Until that date new equipment may be authorized with a frequency tolerance of 0.03 percent in the frequency range 2,200 to 10,500 MHz and equipment so authorized may continue to be used for its life provided that it does not cause interference to the operation of any other licensee. Equipment authorized in the frequency range 2,450 to 10,500 MHz prior to June 23, 1969, at a tolerance of 0.05 percent may continue to be used until February 1, 1976 provided it does not cause interference to the operation of any other licensee.

[2] Beginning January 21, 2000, the equipment authorized to be used at all MDS main stations, and at all MDS booster stations authorized pursuant to § 21.913(b) of this part, shall maintain a frequency tolerance of 0.001%. MDS booster stations authorized pursuant to § 21.913(e) of this part and MDS response stations authorized pursuant to § 21.909 of this part shall employ transmitters with sufficient frequency stability to ensure that the emission is, at all times, within the required emission mask.

(b) As an additional requirement in any band where the Commission makes assignments according to a specified channel plan, provisions shall be made to prevent the emission included within the occupied bandwidth from radiating outside the assigned channel at a level greater than that specified in § 21.106.

[44 FR 60534, Oct. 19, 1979, as amended at 46 FR 23450, Apr. 27, 1981; 48 FR 50329, Nov. 1, 1983; 48 FR 50732, Nov. 3, 1983; 49 FR 37775, Sept. 26, 1984; 54 FR 10327, Mar. 13, 1989; 54 FR 24905, June 12, 1989; 55 FR 46009, Oct. 31, 1990; 56 FR 57816, Nov. 14, 1991; 61 FR 26675, May 28, 1996; 63 FR 65101, Nov. 25, 1998; 64 FR 63730, Nov. 22, 1999]

§§ 21.102–21.104 [Reserved]

§ 21.105 Bandwidth.

Each authorization issued pursuant to these rules will show, as the emission designator, a symbol representing the class of emission which shall be prefixed by a number specifying the necessary bandwidth. This figure does not necessarily indicate the bandwidth actually occupied by the emission at any instant. In those cases where part 2 of this chapter does not provide a formula for the computation of the necessary bandwidth, the occupied bandwidth may be used in the emission designator.

[49 FR 48700, Dec. 14, 1984]

§ 21.106 Emission limitations.

(a) The mean power of emissions shall be attenuated below the mean output power of the transmitter in accordance with the following schedule:

(1) When using transmissions other than those employing digital modulation techniques:

(i) On any frequency removed from the assigned frequency by more than 50 percent up to and including 100 percent of the authorized bandwidth: At least 25 decibels;

(ii) On any frequency removed from the assigned frequency by more than 100 percent up to and including 250 percent of the authorized bandwidth: At least 35 decibels;

(iii) On any frequency removed from the assigned frequency by more than 250 percent of the authorized bandwidth: At least $43+10\ \mathrm{Log}_{10}$ (mean output power in watts) decibels, or 80 decibels, whichever is the lesser attenuation.

(2) When using transmissions employing digital modulation techniques (see § 21.122(b)) in situations other than those covered by subpart K of this part:

(i) For operating frequencies below 15 GHz, in any 4 kHz band, the center frequency of which is removed from the assigned frequency by more than 50 percent up to and including 250 percent of the authorized bandwidth: As specified by the following equation but in no event less than 50 decibels.

A=35+0.8(P;minus;50)+10 Log_{10} B. (Attenuation greater than 80 decibels is not required.)

where:

A=Attenuation (in decibels) below the mean output power level.
P=Percent removed from the carrier frequency.
B=Authorized bandwidth in MHz.

(ii) In any 4 kHz band, the center frequency of which is removed from the assigned frequency by more than 250 percent of the authorized bandwidth: At least 43+10 Log_{10} (mean output power in watts) decibels, or 80 decibels, whichever is the lesser attenuation.

(b) When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than specified in paragraph (a) of this section.

[44 FR 60534, Oct. 19, 1979, as amended at 46 FR 23450, Apr. 27, 1981; 52 FR 23550, June 23, 1987; 61 FR 26675, May 28, 1996; 65 FR 46617, July 31, 2000]

§ 21.107 Transmitter power.

(a) The power which a station will be permitted to use in these services will be the minimum required for satisfactory technical operation commensurate with the size of the area to be served and local conditions which affect radio transmission and reception. In cases of harmful interference, the Commission may, after notice and opportunity for hearing, order a change in the effective radiated power of a station.

(b) The EIRP of a transmitter station employed in this radio service shall not exceed the values shown in the following tabulation:

Frequency range (MHz)	Maximum allowable EIRP for a fixed station (Watts)
2,150 to 2,162	[1] 2000
2,596 to 2,680	[1] 2000

[1] When a Multipoint Distribution Service station uses a non-omnidirectional antenna EIRP up to 7943 Watts may be authorized pursuant to § 21.904(b) of this Part.

[44 FR 60534, Oct. 19, 1979, as amended at 49 FR 37775, Sept. 26, 1984; 52 FR 7140, Mar. 9, 1987; 52 FR 37783, Oct. 9, 1987; 54 FR 10328, Mar. 13, 1989; 54 FR 24905, June 12, 1989; 55 FR 46009, Oct. 31, 1990; 56 FR 57816, Nov. 14, 1991; 58 FR 49224, Sept. 22, 1993; 61 FR 26675, May 28, 1996]

§ 21.108 [Reserved]

§ 21.109 Antenna and antenna structures.

(a) In the event harmful interference is caused to the operation of other stations, the Commission may, after notice and opportunity for hearing, order changes to be made in the height, orientation, gain and radiation pattern of the antenna system.

(b) The Commission may require the replacement, at the licensee's expense, of any antenna system of a permanent fixed station operating at 2500 MHz or higher upon a showing that said antenna causes or is likely to cause interference to any other authorized or proposed station.

[44 FR 60534, Oct. 19, 1979, as amended at 52 FR 37783, Oct. 9, 1987; 61 FR 26675, May 28, 1996]

§ 21.110 Antenna polarization.

Stations operating in the radio services included in this part are not limited as to the type of polarization of the radiated signal, provided, however, that in the event interference in excess of permissible levels is caused to the operation of other stations the Commission may, after notice and opportunity for hearing, order the licensee to change the polarization of the radiated signal. No change in polarization shall be made without prior authorization from the Commission.

[52 FR 37783, Oct. 9, 1987]

§ 21.111 Use of common antenna structure.

The simultaneous use of a common antenna structure by more than one station authorized under this part, or by one or more stations of any other service may be authorized. The owner, however, of each antenna structure required to be painted and/or illuminated under the provisions of Section 303(q) of the Communications Act of 1934, as amended, shall install and maintain

the antenna structure painting and lighting in accordance with part 17 of this chapter. In the event of default by the owner, each licensee or permittee shall be individually responsible for conforming to the requirements pertaining to antenna structure painting and lighting.

[61 FR 4365, Feb. 6, 1996]

§ 21.112 Marking of antenna structures.

No owner, conditional licensee, or licensee of an antenna structure for which obstruction marking or lighting is required and for which an antenna structure registration number has been obtained, shall discontinue the required painting or lighting without having obtained prior written authorization therefor from the Commission. (For complete regulations relative to antenna marking requirements, see part 17 of this chapter.)

[61 FR 4365, Feb. 6, 1996]

§ 21.113 Quiet zones and Arecibo Coordination Zone.

Quiet zones are those areas where it is necessary to restrict radiation so as to minimize possible impact on the operations of radio astronomy or other facilities that are highly sensitive to radio frequency interference. The areas involved and procedures required are as follows:

(a) In order to minimize possible harmful interference at the National Radio Astronomy Observatory site located at Green Bank, Pocahontas County, West Virginia, and at the Naval Radio Research Observatory site at Sugar Grove, Pendleton County, West Virginia, any applicant for a station authorization other than mobile, temporary base, or temporary fixed seeking authorization for a new station or to modify an existing station in a manner which would change either the frequency, power, antenna height or directivity, or location of such a station within the area bounded by 39°15′ N. on the north, 78°30′ W. on the east, 37°30′ N. on the south, and 80°30′ W. on the west shall, at the time of filing such application with the Commission, simultaneously notify the Director, National Radio Astronomy Observatory, Post Office Box No. 2, Green Bank, West Virginia 24944, in writing, of the technical particulars of the proposed operation. Such notification shall include the geographical coordinates of the antenna, antenna height, antenna directivity (if any), proposed frequency, type of emission, and power. In addition, the applicant shall indicate in his application to the Commission the date notification was made to the Observatory. After receipt of such applications, the Commission will allow a period of twenty (20) days for comments or objections in response to the notifications indicated. If an objection to the proposed operation is received during the 20-day period from the National Radio Astronomy Observatory for itself or on behalf of the Naval Radio Research Observatory, the Commission will consider all aspects of the problem and take whatever action is deemed appropriate.

(b) In order to minimize possible harmful interference at the Table Mountain Radio Receiving Zone of the Research Laboratories of the Department of Commerce located in Boulder County, Colorado, applicants for new or modified radio facilities in the vicinity of Boulder County, Colorado are advised to give due consideration prior to filing applications, to the need to protect the Table Mountain Radio Receiving Zone from harmful interference. To prevent degradation of this present ambient radio signal level at the site, the Department of Commerce seeks to ensure that the field strengths of any radiated signals (excluding reflected signals) received on this 728.4 hectare (1800 acre) site (in the vicinity of coordinates 40° 07′ 50″ N Latitude, 105° 15′ 40″ W Longitude) resulting from new assignments (other than mobile stations) or from the modification or relocation of existing facilities do not exceed the following values:

Frequency range	Field strength (mV/m) in authorized bandwidth of service	Power flux density [1] (dbW/m2) in authorized bandwidth of service
Below 540 kHz	10	−65.8
540 to 1600 kHz	20	−59.8
1.6 to 470 MHz	10	[2] −65.8
470 to 890 MHz	30	[2] −54.2

Frequency range	Field strength (mV/m) in authorized bandwidth of service	Power flux density[1] (dbW/m2) in authorized bandwidth of service
Above 890 MHz	1	[2] −85.8

[1] Equivalent values of power flux density are calculated assuming free space characteristic impedance of 376.7=120π ohms.

[2] Space stations shall conform to the power flux density limits at the earth's surface specified in appropriate parts of the FCC rules, but in no case should exceed the above levels in any 4 kHz band for all angles of arrival.

(1) Advance consultation is recommended particularly for those applicants who have no reliable data which indicates whether the field strength or power flux density figures in the above table would be exceeded by their proposed radio facilities (except mobile stations). In such instances, the following is a suggested guide for determining whether coordination is recommended:

(i) All stations within 2.4. kilometers (1.5 miles);

(ii) Stations within 4.8 kilometers (3 miles) with 50 watts or more average effective radiated power (ERP) in the primary plane of polarization in the azimuthal direction of the Table Mountain Radio Receiving Zone;

(iii) Stations within 16.1 kilometers (10 miles) with 1 kW or more average ERP in the primary plane of polarization in the azimuthal direction of Table Mountain Receiving Zone;

(iv) Stations within 80.5 kilometers (50 miles) with 25 kW or more average ERP in the primary plane of polarization in the azimuthal direction of Table Mountain Receiving Zone.

(2) Applicants concerned are urged to communicate with the Radio Frequency Management Coordinator, Department of Commerce, Research Support Services, NOAA R/E5X2, Boulder Laboratories, Boulder, CO 80303; telephone (303) 497–6548, in advance of filling their applications with the Commission.

(3) The Commission will not screen applications to determine whether advance consultation has taken place. However, applicants are advised that such consultation can avoid objections from the Department of Commerce or proceedings to modify any authorization which may be granted which, in fact, delivers a signal at the site in excess of the field strength specified herein.

(c) Protection for Federal Communications Commission monitoring stations:

(1) Applicants in the vicinity of an FCC monitoring station for a radio station authorization to operate new transmitting facilities or changed transmitting facilities which would increase the field strength produced over the monitoring station over that previously authorized are advised to give consideration, prior to filing applications, to the possible need to protect the FCC stations from harmful interference. Geographical coordinates of the facilities which require protection are listed in §0.121(c) of the Commission's Rules. Applications for stations (except mobile stations) which will produce on any frequency a direct wave fundamental field strength of *greater than 10 mV/m* in the authorized bandwidth of service (-65.8 dBW/m^2 power flux density assuming a free space characteristic impedance of 120 ohms) at the referenced coordinates, may be examined to determine extent of possible interference. Depending on the theoretical field strength value and existing root-sum-square or other ambient radio field signal levels at the indicated coordinates, a clause protecting the monitoring station may be added to the station authorization.

(2) In the event that calculated value of expected field exceeds 10 mV/m (-65.8 dBW/m^2) at the reference coordinates, or if there is any question whether field strength levels might exceed the threshold value, advance consultation with the FCC to discuss any protection necessary should be considered. Prospective applicants may communicate with: Chief, Compliance and Information Bureau, Federal Communications Commission, Washington, DC 20554, Telephone (202) 632–6980.

(3) Advance consultation is suggested particularly for those applicants who have no reliable data which indicates whether the field strength or power flux density figure indicated would be exceeded by their proposed radio facilities (except mobile stations). In such instances, the following is a suggested

guide for determining whether an applicant should coordinate:

(i) All stations within 2.4 kilometers (1.5 statute miles);

(ii) Stations within 4.8 kilometers (3 statute miles) with 50 watts or more average effective radiated power (ERP) in the primary plane of polarization in the azimuthal direction of the Monitoring Stations.

(iii) Stations within 16.1 kilometers (10 miles) with 1 kW or more average ERP in the primary plane of polarization in the azimuthal direction of the Monitoring Station.

(iv) Stations within 80.5 kilometers (50 miles) with 25 kW or more average ERP in the primary plane of polarization in the azimuthal direction of the Monitoring Station.

(4) Advance coordination for stations operating above 1000 MHz is recommended only where the proposed station is in the vicinity of a monitoring station designated as a satellite monitoring facility in §0.121(c) of the Commission's Rules and also meets the criteria outlined in paragraphs (c) (2) and (3) of this section.

(5) The Commission will not screen applications to determine whether advance consultation has taken place. However, applicants are advised that such consultation can avoid objections from the Federal Communications Commission or modification of any authorization which will cause harmful interference.

(d) Any applicant for a new permanent base or fixed station to be located on the islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra, or for a modification of an existing authorization which would change the frequency, power, antenna height, directivity, or location of a station on these islands and would increase the likelihood of the authorized facility causing interference, shall notify the Interference Office, Arecibo Observatory, Post Office Box 995, Arecibo, Puerto Rico 00613, in writing or electronically, of the technical parameters of the proposal. Applicants may wish to consult interference guidelines, which will be provided by Cornell University. Applicants who choose to transmit information electronically should e-mail to: prcz@naic.edu

(1) The notification to the Interference Office, Arecibo Observatory shall be made prior to, or simultaneously with, the filing of the application with the Commission. The notification shall state the geographical coordinates of the antenna (NAD–83 datum), antenna height above ground, ground elevation at the antenna, antenna directivity and gain, proposed frequency and FCC Rule Part, type of emission, effective radiated power, and whether the proposed use is itinerant. Generally, submission of the information in the technical portion of the FCC license application is adequate notification. In addition, the applicant shall indicate in its application to the Commission the date notification was made to the Arecibo Observatory.

(2) After receipt of such applications, the Commission will allow the Arecibo Observatory a period of 20 days for comments or objections in response to the notification indicated. The applicant will be required to make reasonable efforts in order to resolve or mitigate any potential interference problem with the Arecibo Observatory and to file either an amendment to the application or a modification application, as appropriate. If the Commission determines that an applicant has satisfied its responsibility to make reasonable efforts to protect the Observatory from interference, its application may be granted.

(3) The provisions of this paragraph do not apply to operations that transmit on frequencies above 15 GHz.

[44 FR 60534, Oct. 19, 1979, as amended at 44 FR 77167, Dec. 31, 1979; 50 FR 39001, Sept. 26, 1985; 52 FR 37783, Oct. 9, 1987; 58 FR 44894, Aug. 25, 1993; 61 FR 8477, Mar. 5, 1996; 62 FR 55530, Oct. 27, 1997]

§§ 21.114–21.115 [Reserved]

§ 21.116 Topographical data.

Determining the location and height above sea level of the antenna site, the elevation or contour intervals shall be taken from United States Geological Survey Topographic Quadrangle Maps, United States Army Corps of Engineers maps or Tennessee Valley Authority maps, whichever is the latest, for all areas for which such maps are available. If such maps are not published for

the area in question, the next best topographic information should be used. Topographic data may sometimes be obtained from State and municipal agencies. Data from Sectional Aeronautical Charts (including bench marks) or railroad depot elevations and highway elevations from road maps may be used where no better information is available. In cases where limited topographic data is available, use may be made of an altimeter in a car driven along roads extending generally radially from the transmitter site. If it appears necessary, additional data may be requested. United States Geological Survey Topographic Quadrangle Maps may be obtained from the Department of the Interior, Geological Survey, Washington, DC 20242. Sectional Aeronautical Charts are available from the Department of Commerce, Coast and Geodetic Survey, Washington, DC 20230.

[44 FR 60534, Oct. 19, 1979, as amended at 52 FR 37783, Oct. 9, 1987]

§ 21.117 Transmitter location.

(a) The applicant shall determine, prior to filing an application for a radio station authorization, that the antenna site specified therein is adequate to render the service proposed. In cases of questionable antenna locations, it is desirable to conduct propagation tests to indicate the field intensity which may be expected in the principal areas or at the fixed points of communication to be served, particularly where severe shadow problems may be expected. In considering applications proposing the use of such locations, the Commission may require site survey tests to be made pursuant to a developmental authorization in the particular service concerned. In such cases, propagation tests should be conducted in accordance with recognized engineering methods and should be made with a transmitting antenna simulating, as near as possible, the proposed antenna installation. Full data obtained from such surveys and its analysis, including a description of the methods used and the name, address and qualifications of the engineer making the survey, must be supplied to the Commission.

(b) The owner of the antenna structure should locate and construct such structure as to avoid making them hazardous to air navigation. (See part 17 of this chapter for provisions relating to antenna structures.) Such installation shall be maintained in good structural condition together with any required painting or lighting.

[44 FR 60534, Oct. 19, 1979, as amended at 61 FR 4365, Feb. 6, 1996]

§ 21.118 Transmitter construction and installation.

(a) The equipment at the operating and transmitting positions shall be so installed and protected that it is not accessible to, or capable of being operated by, persons other than those duly authorized by the licensee.

(b) In any case where the maximum modulating frequency of a transmitter is prescribed by the Commission, the transmitter shall be equipped with a low-pass or band-pass modulation filter of suitable performance characteristics. In those cases where a modulation limiter is employed, the modulation filter shall be installed between the transmitter stage in which limiting is effected and the modulated stage of the transmitter.

(c) Each transmitter employed in these services shall be equipped with an appropriately labeled pilot lamp or meter which will provide continuous visual indication at the transmitter when its control circuits have been placed in a condition to activate the transmitter. Such requirement will not be applicable to MDS response stations or MDS booster stations authorized pursuant to §21.913(e). In addition, facilities shall be provided at each transmitter to permit the transmitter to be turned on and off independently of any remote control circuits associated therewith.

(d) [Reserved]

(e) At each transmitter control point the following facilities shall be installed:

(1) A carrier operated device which will provide continuous visual indication when the transmitter is radiating, or, in lieu thereof, a pilot lamp or meter which will provide continuous visual indication when the transmitter

control circuits have been placed in a condition to activate the transmitter.

(2) Facilities which will permit the operator to turn transmitter carrier on and off at will.

(f) Transmitter control circuits from any control point shall be so installed that grounding or shorting any line in the control circuit will not cause the transmitter to radiate: *Provided, however,* That this provision shall not be applicable to control circuits of stations which normally operate with continuous radiation or to control circuits which are under the effective operational control of responsible operating personnel 24 hours per day.

[44 FR 60534, Oct. 19, 1979, as amended at 52 FR 37783, Oct. 9, 1987; 63 FR 65101, Nov. 25, 1998]

§ 21.119 [Reserved]

§ 21.120 Authorization of transmitters.

(a) Except for transmitters used at developmental stations, each transmitter shall be a type which has been certificated by the Commission for use under the applicable rules of this part.

(b) Any manufacturer of a transmitter to be produced for use under the rules of this part may request certification by following the applicable procedures set forth in part 2 of this chapter. Type accepted and notified transmitters are included in the Commission's Radio Equipment List.

(c) Certification for an individual transmitter may also be requested by an applicant for a station authorization, pursuant to the procedures set forth in part 2 of this chapter.

[44 FR 60534, Oct. 19, 1979, as amended at 49 FR 3999, Feb. 1, 1984; 50 FR 7340, Feb. 22, 1985; 58 FR 49226, Sept. 22, 1993; 59 FR 19645, Apr. 25, 1994; 61 FR 26676, May 28, 1996; 63 FR 36603, July 7, 1998]

§ 21.121 [Reserved]

§ 21.122 Microwave digital modulation.

(a) Microwave transmitters employing digital modulation techniques and operating below 15 GHz shall, with appropriate multiplex equipment, comply with the following additional requirement: The bit rate, in bits per second, shall be equal to or greater than the bandwidth specified by the emission designator in Hertz (e.g., to be acceptable, equipment transmitting at a 6 Mb/s rate must not require a bandwidth of greater than 6 MHz), except the bandwidth used to calculate the minimum rate shall not include any authorized guard band.

(b) For purposes of compliance with the emission limitation requirements of § 21.106(a)(2) of this part and the requirements of paragraph (a) of this section, digital modulation techniques are considered as being employed when digital modulation contributes 50 percent or more to the total peak frequency deviation of a transmitted radio frequency carrier. The total peak frequency deviation shall be determined by adding the deviation produced by the digital modulation signal and the deviation produced by any frequency division multiplex (FDM) modulation used. The deviation (D) produced by the FDM signal shall be determined in accordance with § 2.202(f) of part 2 of this chapter.

(c) Transmitters employing digital modulation techniques shall effectively eliminate carrier spikes or single frequency tones in the output signal to the degree which would be obtained without repetitive patterns occurring in the signal.

[44 FR 60534, Oct. 19, 1979, as amended at 46 FR 23451, Apr. 27, 1981; 49 FR 37775, Sept. 26, 1984; 58 FR 49226, Sept. 22, 1993; 61 FR 26676, May 28, 1996]

Subpart D—Technical Operation

§ 21.200 Station inspection.

The licensee of each station authorized in the radio services included in this part shall make the station available for inspection by representatives of the Commission at any reasonable hour.

[44 FR 60534, Oct. 19, 1979, as amended at 52 FR 37783, Oct. 9, 1987]

§ 21.201 Posting of station license.

(a) The instrument of authorization, a clearly legible photocopy thereof, or the name, address and telephone number of the custodian of the instrument of authorization shall be available at

each station, booster station authorized pursuant to §21.913(b) and MDS response station hub. Each operator of an MDS booster station shall post at the booster station the name, address and telephone number of the custodian of the notification filed pursuant to §21.913(e) if such notification is not maintained at the booster station.

(b) If an MDS station, an MDS booster station or an MDS response station hub is operated unattended, the call sign and name of the licensee shall be displayed such that it may be read within the vicinity of the transmitter enclosure or antenna structure.

[64 FR 63731, Nov. 22, 1999]

§§ 21.202—21.208 [Reserved]

§ 21.209 Communications concerning safety of life and property.

(a) Handling and transmission of messages concerning the safety of life or property which is in imminent danger shall be afforded priority over other messages.

(b) No person shall knowingly cause to be transmitted any false or fraudulent message concerning the safety of life or property, or refuse upon demand immediately to relinquish the use of a radio circuit to enable the transmission of messages concerning the safety of life or property which is in imminent danger, or knowingly interfere or otherwise obstruct the transmission of such messages.

§ 21.210 Operation during emergency.

The licensee of any station in these services may, during a period of emergency in which normal communication facilities are disrupted as a result of hurricane, flood, earthquake, or similar disaster, utilize such station for emergency communication service in a manner other than that specified in the instrument of authorization: *Provided*, That (a) That as soon as possible after the beginning of such emergency use, notice be sent to the Commission at Washington, D.C. stating the nature of the emergency and the use to which the station is being put, and (b) that the emergency use of the station shall be discontinued as soon as substantially normal communication facilities are again available, and (c) that the Commission at Washington, D.C. shall be notified immediately when such special use of the station is terminated, and (d) that, in no event, shall any station engage in emergency transmission on frequencies other than, or with power in excess of, that specified in the instrument of authorization or as otherwise expressly provided by the Commission, or by law, and (e) that the Commission may, at any time, order the discontinuance of any such emergency communication.

[44 FR 60534, Oct. 19, 1979, as amended at 52 FR 37784, Oct. 9, 1987]

§ 21.211 Suspension of transmission.

Transmission shall be suspended immediately upon detection by the station or operator licensee or upon notification by the Commission of a deviation from the technical requirements of the station authorization and shall remain suspended until such deviation is corrected, except for transmission concerning the immediate safety of life or property, in which case transmission shall be suspended immediately after the emergency is terminated.

Subpart E—Miscellaneous

§ 21.300 [Reserved]

§ 21.301 National defense; free service.

Any common carrier or Multipoint Distribution Service non-common carrier authorized under the rules of this part may render to any agency of the United States Government free service in connection with the preparation for the national defense. Every such carrier or Multipoint Distribution Service non-common carrier rendering any such free service shall make and file, in duplicate, with the Commission, on or before the 31st of July and on or before the 31st day of January in each year, reports covering the periods of 6 months ending on the 30th of June and the 31st of December, respectively, next prior to said dates. These reports shall show the names of the agencies to which free service was rendered pursuant to this rule, the general character of the communications handled for each agency, and the charges in dollars which would have accrued to the carrier or Multipoint Distribution Service

non-common carrier for such service rendered to each agency if charges for such communications had been collected at the published tariff rates.

[52 FR 27555, July 22, 1987]

§ 21.302 Answers to notices of violation.

Any person receiving official notice of a violation of the terms of the Communications Act of 1934, as amended, any other Federal statute or Executive Order pertaining to radio or wire communications or any international radio or wire communications treaty or convention, or regulations annexed thereto to which the United States is a party, or the rules and regulations of the Federal Communications Commission, shall, within 10 days from such receipt, send a written answer to the office of the Commission originating the official notice. If an answer cannot be sent or an acknowledgment made within such 10-day period by reason of illness or other unavoidable circumstances, acknowledgment and answer shall be made at the earliest practicable date with a satisfactory explanation of the delay. The answer to each notice shall be complete in itself and shall not be abbreviated by reference to other communications or answers to other notices. If the notice relates to some violation that may be due to the physical or electrical characteristics of transmitting apparatus, the answer shall state fully what steps have been taken to prevent future violations, and, if any new apparatus is to be installed, the date such apparatus was ordered, the name of the manufacturer, and promised date of delivery. If the installation of such apparatus requires a construction permit, the file number of the application shall be given or, if a file number has not been assigned by the Commission, such identification as will permit ready reference thereto. If the notice of violation relates to inadequate maintenance resulting in improper operation of the transmitter, the name and license number of the operator performing the maintenance shall be given. If the notice of violation relates to some lack of attention to, or improper operation of, the transmitter by other employees, the reply shall set forth the steps taken to prevent a recurrence of such lack of attention or improper operation.

§ 21.303 Discontinuance, reduction or impairment of service.

(a) If the public communication service provided by a station subject to this rule part is involuntarily discontinued, reduced or impaired for a period exceeding 48 hours, the station licensee shall promptly give notification thereof in writing to the Mass Media Bureau at Washington, DC 20554. In every such case, the licensee shall furnish full particulars as to the reasons for such discontinuance, reduction or impairment of service, including a statement as to when normal service is expected to be resumed. When normal service is resumed, prompt notification thereof shall be given in writing to the Mass Media Bureau at Washington, DC 20554.

(b) No station licensee subject to title II of the Communications Act of 1934, as amended, shall voluntarily discontinue, reduce or impair public communication service to a community or part of a community without obtaining prior authorization from the Commission pursuant to the procedures set forth in part 63 of this chapter or complying with the requirements set forth at § 21.910. In the event that permanent discontinuance of service is authorized by the Commission, the station licensee shall promptly send the station license for cancellation to the Mass Media Bureau at Washington, DC 20554, except that station licenses need not be surrendered for cancellation if the discontinuance is a result of a change of status by a Multipoint Distribution Service licensee from common carrier to non-common carrier pursuant to § 21.910.

(c) Any station licensee, not subject to title II of the Communications Act of 1934, as amended, who voluntarily discontinues, reduces or impairs public communication service to a community or a part of a community shall give written notification to the Commission within 7 days thereof. In the event of permanent discontinuance of service, the station licensee shall promptly send the station license for cancellation to the Mass Media Bureau at Washington, DC 20554, except that

Multipoint Distribution Service station licenses need not be surrendered for cancellation if the discontinuance is a result of a change of status by a Multipoint Distribution Service licensee from non-common carrier to common carrier.

(d) If any radio frequency should not be used to render any service as authorized during a consecutive period of twelve months at any time after construction is completed and a certification of completion of construction has been filed, under circumstances that do not fall within the provisions of paragraph (a), (b) or (c) of this section, or, if removal of equipment or facilities has rendered the station not operational, the licensee shall, within thirty days of the end of such period of nonuse:

(1) Submit for cancellation the station license (or licenses) to the Commission at Washington, DC 20554.

(2) File an application for modification of the license (or licenses) to delete the unused frequency (or frequencies); or

(3) Request waiver of this rule and demonstrate either that the frequency will be used (as evidenced by appropriate requests for service, etc.) within six months of the end of the initial period of nonuse, or that the frequency will be converted to allow rendition of other authorized public services within one year of the end of the initial period of nonuse by the filing of appropriate applications within six months of the end of the period of nonuse.

If any frequency authorization is cancelled under this paragraph, the Commission will declare by public notice the frequency (or frequencies) vacated.

[44 FR 60534, Oct. 19, 1979, as amended at 52 FR 27555, July 22, 1987; 52 FR 37784, Oct. 9, 1987; 58 FR 19774, Apr. 16, 1993; 61 FR 26676, May 28, 1996]

§ 21.304 Tariffs, reports, and other material required to be submitted to the Commission.

Sections 1.771 through 1.815 of this chapter contain summaries of certain materials and reports, including schedule of charges and accounting and financial reports, which, when applicable, must be filed with the Commission. These requirements likewise shall apply to licensees which alternate between rendering service on a common carrier and non-common carrier basis.

[63 FR 65102, Nov. 25, 1998; 64 FR 4054, Jan. 27, 1999]

§ 21.305 Reports required concerning amendments to charters and partnership agreements.

Any amendments to charters, articles of incorporation or association, or partnership agreements shall promptly be filed at the Commission's main office in Washington, DC. Such filing shall be directed to the attention of the Chief, Common Carrier Bureau.

§ 21.306 Requirement that licensees respond to official communications.

All licensees in these services are required to respond to official communications from the Commission with reasonable dispatch and according to the tenor of such communications. Failure to do so will be given appropriate consideration in connection with any subsequent applications which the offending party may file and may result in the designation of such applications for hearing, or in appropriate cases, the institution of proceedings looking to the modification or revocation of the pertinent authorizations.

[44 FR 60534, Oct. 19, 1979, as amended at 52 FR 37784, Oct. 9, 1987]

§ 21.307 Equal employment opportunities.

(a) *General policy.* Equal opportunities in employment must be afforded by all common carrier and Multipoint Distribution Service non-common carrier licensees or conditional licensees to all qualified persons, and no personnel shall be discriminated against in employment because of sex, race, color, religion, or national origin.

(b) *Equal employment opportunity program.* Each licensee or conditional licensee must establish, maintain, and carry out, a positive continuing program of specific practices designed to assure equal opportunity in every aspect of employment policy and practice. Under the terms of its program, a licensee or conditional licensee must:

(1) Define the responsibility of each level of management to insure a positive application and vigorous enforcement of the policy of equal opportunity, and establish a procedure to review and control managerial and supervisory performance.

(2) Inform its employees and recognized employee organizations of the positive equal employment opportunity policy and program and enlist their cooperation.

(3) Communicate its equal employment opportunity policy and program and its employment needs to sources of qualified applicants without regard to sex, race, color, religion, or national origin, and solicit their recruitment assistance on a continuing basis.

(4) Conduct a continuing campaign to exclude every form of prejudice or discrimination based upon sex, race, color, religion, or national origin, from the licensee's or conditional licensee's personnel policies and practices and working conditions.

(5) Conduct a continuing review of job structure and employment practices and adopt positive recruitment, training, job design and other measures needed in order to insure genuine equality of opportunity to participate fully in all organizational units, occupations and levels of responsibility.

(c) *Additional information to be furnished to the Commission*. (1) Equal Employment Programs to be filed by common carrier and Multipoint Distribution Service non-common carrier licensees and conditional licensees:

(i) All licensees or conditional licensees must file a statement of their equal employment opportunity program not later than December 17, 1970, indicating specific practices to be followed in order to assure equal employment opportunity on the basis of sex, race, color, religion, or national origin in such aspects of employment practices as regards recruitment, selection, training, placement, promotion, pay, working conditions, demotion, layoff and termination.

(A) Any changes or amendments to existing programs should be filed with the Commission on April 1 of each year thereafter.

(B) If a licensee or conditional licensee has fewer than 16 full-time employees, no such statement need be filed.

(2) The program should reasonably address itself to such specific areas as set forth below, to the extent that they are appropriate in terms of licensee size, location, etc.

(i) *To assure nondiscrimination in recruiting.* (A) Posting notices in the licensee's or conditional licensee's offices informing applicants for employment of their equal employment rights and their right to notify the Equal Employment Opportunity Commission, the Federal Communications Commission, or other appropriate agency. Where a substantial number of applicants are Spanish-surnamed Americans such notice should be posted in Spanish and English.

(B) Placing a notice in bold type on the employment application informing prospective employees that discrimination because of sex, race, color, religion, or national origin is prohibited and that they may notify the Equal Employment Opportunity Commission, the Federal Communications Commission or other appropriate agency if they believe they have been discriminated against.

(C) Placing employment advertisements in media which have significant circulation among minority-group people in the recruiting area.

(D) Recruiting through schools and colleges with significant minority group enrollments.

(E) Maintaining systematic contacts with minority and human relations organizations, leaders, and spoksmen to encourage referral of qualified minority or female applicants.

(F) Encouraging present employees to refer minority or female applicants.

(G) Making known to the appropriate recruitment sources in the employer's immediate area that qualified minority members are being sought for consideration whenever the licensee or conditional licensee hires.

(ii) *To assure nondiscrimination in selection and hiring.* (A) Instructing personally those on the staff of the licensee or conditional licensee who make hiring decisions that all applicants for all jobs are to be considered without discrimination.

(B) Where union agreements exist, cooperating with the union or unions in the development of programs to assure qualified minority persons or females of equal opportunity for employment, and including an effective nondiscrimination clause in new or renegotiated union agreements.

(C) Avoiding use of selection techniques or tests which have the effect of discriminating against minority groups or females.

(iii) *To assure nondiscriminatory placement and promotions.* (A) Instructing personally those of the licensee's or conditional licensee's staff who make decisions on placement and promotion that minority employees and females are to be considered without discrimination, and that job areas in which there is little or no minority or female representation should be reviewed to determine whether this results from discrimination.

(B) Giving minority groups and female employees equal opportunity for positions which lead to higher positions. Inquiring as to the interest and skills of all lower-paid employees with respect to any of the higher-paid positions, followed by assistance, counseling, and effective measures to enable employees with interest and potential to qualify themselves for such positions.

(C) Reviewing seniority practices to insure that such practices are nondiscriminatory and do not have a discriminatory effect.

(D) Avoiding use of selection techniques or tests, which have the effect of discriminating against minority groups or females.

(iv) *To assure nondiscrimination in other areas of employment practices.* (A) Examining rates of pay and fringe benefits for present employees with equivalent duties, and adjusting any inequities found.

(B) Providing opportunity to perform overtime work on a basis that does not discriminate against qualified minority groups or female employees.

(d) *Report of complaints filed against licensees and conditional licensees.* (1) All licensees or conditional licensees must submit an annual report to the FCC no later than May 31 of each year indicating whether any complaints regarding violations by the licensee or conditional licensee or equal employment provisions of Federal, State, Territorial, or local law have been filed before anybody having competent jurisdiction.

(i) The report should state the parties involved, the date filing, the courts or agencies before which the matters have been heard, the appropriate file number (if any), and the respective disposition or current status of any such complaints.

(ii) Any licensee or conditional licensee who has filed such information with the EEOC need not do so with the Commission, if such previous filing is indicated.

(e) *Complaints of violations of equal employment programs.* (1) Complaints alleging employment discrimination against a common carrier or Multipoint Distribution Service non-common carrier licensee or conditional licensee will be considered by the Commission in the following manner:

(i) If a complaint raising an issue of discrimination is received against a licensee or conditional licensee who is within the jurisdiction of the EEOC, it will be submitted to that agency. The Commission will maintain a liaison with that agency which will keep the Commission informed of the disposition of complaints filed against any of the common carrier or Multipoint Distribution Service non-common carrier licensees or conditional licensees.

(ii) Complaints alleging employment discrimination against a common carrier or Multipoint Distribution Service non-common carrier licensee or conditional licensee who does not fall under the jurisdiction of the EEOC but is covered by appropriate enforceable State law, to which penalties apply, may be submitted by the Commission to the respective state agency.

(iii) Complaints alleging employment discrimination against a common carrier or Multipoint Distribution Service non-common carrier licensee or conditional licensee who does not fall under the jurisdiction of the EEOC or an appropriate State law, will be accorded appropriate treatment by the FCC.

(iv) The Commission will consult with the EEOC on all matters relating to the evaluation and determination of

compliance with the common carrier and Multipoint Distribution Service non-common carrier licensees or conditional licensees with the principles of equal employment as set forth herein.

(2) Complaints indicating a general pattern of disregard of equal employment practices which are received against a licensee or conditional licensee who is required to file an employment report to the Commission under §1.815(a) of this chapter, will be investigated by the Commission.

(f) *Records available to the public*—(1) *Commission records.* A copy of every annual employment report, equal employment opportunity programs, and reports on complaints regarding violations of equal employment provisions of Federal, State, territorial, or local law, and copies of all exhibits, letters, and other documents filed as part thereof, all amendments thereto, all correspondence between the conditional licensee or licensee and the Commission pertaining to the reports after they have been filed and all documents incorporated therein by reference, are open for public inspection at the offices of the Commission.

(2) *Records to be maintained locally for public inspection by licensees or conditional licensees*—(i) *Records to be maintained.* Each common carrier or Multipoint Distribution Service non-common carrier licensee or conditional licensee required to file annual employment reports, equal employment opportunity programs, and annual reports on complaints regarding violations of equal employment provisions of Federal, State, territorial, or local law must maintain, for public inspection, in the same manner and in the same locations as required for the keeping and posting of tariffs as set forth in §61.72 of this chapter, a file containing a copy of each such report and copies of all exhibits, letters, and other documents filed as part thereto, all correspondence between the conditional licensee or licensee and the Commission pertaining to the reports after they have been filed and all documents incorporated therein by reference.

(ii) *Period of retention.* The documents specified in paragraph (f)(2)(i) of this section shall be maintained for a period of 2 years.

(g) *Cross reference.* Applicability of cable television EEO requirements to MDS and MMDS facilities, see §21.920.

[44 FR 60534, Oct. 19, 1979, as amended at 56 FR 57816, Nov. 14, 1991; 58 FR 42249, Aug. 9, 1993]

Subpart F—Developmental Authorizations

§ 21.400 Eligibility.

Developmental authorizations for stations in the radio services included in this part will be issued only to existing and proposed communication common carriers who are legally, financially and otherwise qualified to conduct experimentation utilizing hertzian waves for the development of engineering or operational data, or techniques, directly related to a proposed part 21 radio service or to a regularly established radio service regulated by the rules of this part.

§ 21.401 Scope of service.

Developmental authorizations may be issued for:

(a) Field strength surveys relative to or precedent to the filing of applications for licenses, in connection with the selection of suitable locations for stations proposed to be established in any of the regularly established radio services regulated by the rules of this part; or

(b) The testing of existing or authorized antennas, wave guides, or transmission paths.

[44 FR 60534, Oct. 19, 1979, as amended at 52 FR 37784, Oct. 9, 1987]

§ 21.402 Adherence to program of research and development.

The program of research and development, as stated by an applicant in the application for license or stated in the instrument of station authorization, shall be substantially adhered to unless the licensee is otherwise authorized by the Commission.

[44 FR 60534, Oct. 19, 1979, as amended at 52 FR 37784, Oct. 9, 1987]

§ 21.403 Special procedure for the development of a new service or for the use of frequencies not in accordance with the provisions of the rules in this part.

(a) An authorization for the development of a new common carrier service not in accordance with the provisions of the rules in this part may be granted for a limited time, but only after the Commission has made a preliminary determination with respect to the factors set forth in this paragraph, as each case may require. This procedure also applies to any application that involves use of a frequency which is not in accordance with the provisions of the rules in this part, although in accordance with the Table of Frequency Allocations contained in part 2 of this chapter. (An application which involves use of a frequency which is not in accordance with the Table of Frequency Allocations in part 2 of this chapter should be filed in accordance with the provisions of part 5 of this chapter, Experimental Radio Services (other than Broadcast).) The factors with respect to which the Commission will make a preliminary determination before acting on an application filed under this paragraph are as follows:

(1) That the public interest, convenience or necessity warrants consideration of the establishment of the proposed service or the use of the proposed frequency;

(2) That the proposed operation appears to warrant consideration to effect a change in the provisions of the rules in this part; and/or

(3) That some operational data should be developed for consideration in any rule making proceeding which may be initiated.

(b) Applications for stations which are intended to be used in the development of a proposed service shall be accompanied by a petition to amend the Commission's rules with respect to frequencies and such other items as may be necessary to provide for the regular establishment of the proposed service.

[44 FR 60534, Oct. 19, 1979, as amended at 52 FR 37784, Oct. 9, 1987]

§ 21.404 Terms of grant; general limitations.

(a) Developmental authorizations normally shall be issued for one year, or such shorter term as the Commission may deem appropriate in any particular case, and shall be subject to cancellation without hearing by the Commission at any time upon notice to the licensee.

(b) Where some phases of the developmental program are not covered by the general rules of the Commission or by the rules of this part, the Commission may specify supplemental or additional requirements or conditions in each case as it may deem necessary in the public interest, convenience or necessity.

(c) Frequencies allocated to the service toward which such development is directed will be assigned for developmental operation on the basis that no interference will be caused to the regular services of stations operating in accordance with the Commission's Table of Frequency Allocations (§ 2.106 of this chapter).

(d) The rendition of communication service for hire is not permitted under any developmental authorizations unless specifically authorized by the Commission.

(e) The grant of a developmental authorization carries with it no assurance that the developmental program, if successful, will be authorized on a permanent basis either as to the service involved or the use of the frequencies assigned or any other frequencies.

§ 21.405 Supplementary showing required.

(a) Authorizations for development of a proposed radio service in the services included in this part will be issued only upon a showing that the applicant has a definite program of research and development, the details of which shall be set forth, which has reasonable promise of substantial contribution to these services within the term of such authorization. A specific showing should be made as to the factors which qualify the applicant technically to conduct the research and development program, including a description of the

nature and extent of engineering facilities that the applicant has available for such purposes.

(b) Expiring developmental authorizations may be renewed only upon the applicant's compliance with the applicable requirements of § 21.406 (a) and (b) relative to the authorization sought to be renewed and upon a factual showing that further progress in the program of research and development requires further radio transmission and that the public interest, convenience or necessity would be served by renewal of such authorization.

[44 FR 60534, Oct. 19, 1979, as amended at 52 FR 37784, Oct. 9, 1987]

§ 21.406 Developmental report required.

(a) Upon completion of the program of research and development, or, in any event, upon the expiration of the instrument of station authorization under which such investigations were permitted, or at such times during the term of the station authorization as the Commission may deem necessary to evaluate the progress of the developmental program, the licensee shall submit, in duplicate, a comprehensive report on the following items, in the order designated:

(1) Report on the various phases of the project which were investigated.

(2) Total number of hours of operation on each frequency assigned.

(3) Copies of any publication on the project.

(4) A listing of any patents applied for, including copies of any patents issued as a consequence of the activities carried forth under the authorization.

(5) Detailed analysis of the result obtained.

(6) Any other pertinent information.

(b) In addition to the information required by paragraph (a) of this section, the developmental report of a station authorized for the development of a proposed radio service shall include comprehensive information on the following items:

(1) Probable public support and methods of its determination.

(2) Practicability of service operations.

(3) Interference encountered.

(4) Pertinent information relative to merits of the proposed service.

(5) Propagation characteristics of frequencies used, particularly with respect to the service objective.

(6) Frequencies believed to be more suitable and reasons therefor.

(7) Type of signals or communications employed in the experimental work.

(c) Normally, developmental reports will be made a part of the Commission's public records. However, an applicant may request that the Commission withhold from the public certain reports and associated material relative to the accomplishments achieved under developmental authorization, and, if it appears that such information should be withheld, the Commission will so direct.

Subparts G—J [Reserved]

Subpart K—Multipoint Distribution Service

§ 21.900 Eligibility.

(a) Authorizations for stations in this service will be granted to existing and proposed communications common carriers and non-common carriers. An application will be granted only in cases where it can be shown that:

(1) The applicant is legally, financially, technically, and otherwise qualified to render the proposed service; and

(2) There are frequencies available to enable the applicant to render a satisfactory service; and

(3) The public interest, convenience and necessity would be served by a grant thereof.

(b) The applicant shall state whether service will be provided initially on a common carrier basis or on a non-common carrier basis. An applicant proposing to provide initially common carrier service shall state whether there is any affiliation or relationship to any intended or likely subscriber or program originator.

[63 FR 65102, Nov. 25, 1998; 64 FR 4054, Jan. 27, 1999, as amended at 64 FR 63731, Nov. 22, 1999]

EFFECTIVE DATE NOTE: At 63 FR 65103, Nov. 25, 1998, § 21.900 was revised. Paragraph (a)(2)

contains information and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 21.901 Frequencies.

(a) Frequencies in the bands 2150–2162 MHz, 2596–2644 MHz, 2650–2656 MHz, 2662–2668 MHz, 2674–2680 MHz and 2686–2690 MHz are available for assignment to fixed stations in this service. Frequencies in the band 2150–2160 MHz are shared with nonbroadcast omnidirectional radio systems licensed under other parts of the Commission's Rules, and frequencies in the band 2160–2162 MHz are shared with directional radio systems authorized in other common carrier services. Frequencies in the 2596–2644 MHz band are shared with Instructional Television Fixed Service stations licensed under part 74 of the Commission's Rules. Channels I5, I13, I6 and I14, listed in §74.939(j) of this chapter, are assigned to fixed stations in the 2596–2620 band, and are shared with Instructional Television Fixed Service Stations licensed under part 74 of the Commission's Rules to operate in this band; grandfathered channels I21, I29, I22 and I30, listed in §74.939(j) of this chapter, are licensed under part 21 or part 74 of the Commission's Rules, as applicable.

(b) Applicants may be assigned a channel(s) according to one of the following frequency plans:

(1) At 2150–2156 MHz (designated as Channel 1), or

(2) At 2156–2162 MHz (designated as Channel 2), or

(3) At 2156–2160 MHz (designated as Channel 2A), or

(4) At 2596–2602 MHz, 2608–2614 MHz, 2620–2626 MHz, and 2632–2638 MHz (designated as Channels E1, E2, E3 and E4, respectively, with the four channels to be designated the E-group channels), and Channels I5 and I13 listed in §74.939(j) of this chapter,[1] or

(5) At 2602–2608 MHz, 2614–2620 MHz, 2626–2632 MHz and 2638–2644 MHz (designated as Channels F1, F2, F3 and F4, respectively, with the four channels to be designated the F-group channels), and Channels I6 and I14, listed in §74.939(j) of this chapter,[1] or

(6) At 2650–2656 MHz, 2662–2668 MHz and 2674–2680 MHz (designated as Channels H1, H2 and H3, respectively, with the three channels to be designated the H-group channels).[1]

(c) Channel 2 will be assigned only where there is evidence that no harmful interference will occur to any authorized point-to-point facility in the 2160–2162 MHz band. Channel 2 may be assigned only if the transmitting antenna of the station is to be located within 16.1 kilometers (10 miles) of the coordinates of the following metropolitan areas:

Principal City	Coordinates
Akron, Ohio	Lat. 41°05′06″ N., long. 81°31′06″ W.
Albany-Schenectady-Troy, N.Y.	Lat. 42°39′00″ N., long. 73°45′24″ W.
Anaheim-Santa Ana-Garden Grove, Calif.	Lat. 33°46′30″ N., long. 117°54′48″ W.
Atlanta, Ga	Lat. 33°45′00″ N., long. 84°23′12″ W.
Baltimore, Md	Lat. 39°17′18″ N., long. 76°37′00″ W.
Birmingham, Ala	Lat. 33°30′42″ N., long. 86°48′24″ W.
Boston, Mass	Lat. 42°21′42″ N., long. 71°03′30″ W.
Buffalo, N.Y	Lat. 42°53′12″ N., long. 78°52′30″ W.
Chicago, Ill	Lat. 41°53′00″ N., long. 87°37′30″ W.
Cincinnati, Ohio	Lat. 39°06′00″ N., long. 84°30′48″ W.
Cleveland, Ohio	Lat. 41°29′48″ N., long. 81°42′00″ W.
Columbus, Ohio	Lat. 39°57′42″ N., long. 83°00′06″ W.
Dallas, Tex	Lat. 32°46′36″ N., long. 96°48′42″ W.
Dayton, Ohio	Lat. 39°45′24″ N., long. 84°11′42″ W.
Denver, Colo	Lat. 39°44′24″ N., long. 104°59′18″ W.
Detroit, Mich	Lat. 42°20′00″ N., long. 83°03′00″ W.
Fort Worth, Tex	Lat. 32°45′00″ N., long. 97°17′42″ W.
Gary, Ind	Lat. 41°36′00″ N., long. 87°20′00″ W.
Hartford, Conn	Lat. 41°46′00″ N., long. 72°40′30″ W.
Houston, Tex	Lat. 29°45′48″ N., long. 95°21′42″ W.
Indianapolis, Ind	Lat. 39°46′12″ N., long. 86°09′18″ W.
Kansas City, Mo	Lat. 39°06′00″ N., long. 94°34′42″ W.
Los Angeles-Long Beach, Calif.	Lat. 34°03′18″ N., long. 118°15′00″ W.
Louisville, Ky	Lat. 38°14′48″ N., long. 85°45′42″ W.
Memphis, Tenn	Lat. 35°07′30″ N., long. 90°03′24″ W.
Miami, Fla	Lat. 25°46′30″ N., long. 80°11′24″ W.
Milwaukee, Wis	Lat. 43°02′18″ N., long. 87°54′48″ W.
Minneapolis-St. Paul, Minn.	Lat. 44°59′00″ N., long. 93°15′48″ W.
New Orleans, La	Lat. 29°57′48″ N., long. 90°03′48″ W.
New York City, N.Y.-Newark-Jersey City-Paterson, N.J.	Lat. 40°42′30″ N., long. 74°00′00″ W.
Norfolk, Va	Lat. 36°50′42″ N., long. 76°17′12″ W.
Oklahoma City, Okla	Lat. 35°29′30″ N., long. 97°30′12″ W.
Philadelphia, Pa	Lat. 39°57′00″ N., long. 75°09′48″ W.
Phoenix, Ariz	Lat. 33°27′18″ N., long. 112°04′24″ W.
Pittsburgh, Pa	Lat. 40°26′12″ N., long. 80°00′30″ W.
Portland, Oreg	Lat. 45°32′06″ N., long. 122°37′12″ W.
Providence, R.I	Lat. 41°49′00″ N., long. 71°24′24″ W.

[1] No 125 kHz channels are provided for Channels E3, E4, F3, F4, H1, H2 and H3, except for those grandfathered for Channels E3, E4, F3 and F4. The 125 kHz channels associated with Channels E3, E4, F3, F4, H1, H2 and H3 are allocated to the Private Operational Fixed Point-to-Point Microwave Service, pursuant to §101.147(g) of this chapter.

Principal City	Coordinates
Rochester, N.Y	Lat. 43°09′30″ N., long. 77°36′30″ W.
Sacramento, Calif	Lat. 38°35′06″ N., long. 121°29′24″ W.
San Antonio, Tex	Lat. 29°25′24″ N., long. 98°29′43″ W.
San Bernardino-Riverside, Calif.	Lat. 34°06′30″ N., long. 117°18′36″ W.
San Diego, Calif	Lat. 32°42′48″ N., long. 117°09′12″ W.
San Francisco-Oakland, Calif.	Lat. 37°46′30″ N., long. 122°25′00″ W.
San Jose-Palo Alto-Sunnyvale, Calif.	Lat. 37°22′36″ N., long. 122°02′00″ W.
Seattle-Everett, Wash.	Lat. 47°35′48″ N., long. 122°19′48″ W.
St. Louis, Mo	Lat. 38°37′00″ N., long. 90°11′36″ W.
Syracuse, N.Y	Lat. 43°03′06″ N., long. 76°09′00″ W.
Tampa-St. Petersburg, Fla.	Lat. 27°57′06″ N., long. 82°27′00″ W.
Toledo, Ohio	Lat. 41°38′48″ N., long. 83°32′30″ W.
Washington, D.C	Lat. 38°53′30″ N., long. 77°02′00″ W.

(d) An MDS licensee or conditional licensee may apply to exchange evenly one or more of its assigned channels with another MDS licensee or conditional licensee in the same system, or with an ITFS licensee or conditional licensee in the same system. The licensees or conditional licensees seeking to exchange channels shall file in tandem with the Commission separate pro forma assignment of license applications, each attaching an exhibit which clearly specifies that the application is filed pursuant to a channel exchange agreement. The exchanged channel(s) shall be regulated according to the requirements applicable to the assignee.

(e) Frequencies in the band segments 18,580–18,820 MHz and 18,920–19,160 MHz that were licensed or had applications pending before the Commission as of September 18, 1998 may continue those operations for point-to-point return links from a subscriber's location on a shared co-primary basis with other services under parts 25, 74, 78 and 101 of this chapter until June 8, 2010. Prior to June 8, 2010, such stations are subject to relocation by licensees in the fixed-satellite service. Such relocation is subject to the provisions of §§ 101.85 through 101.97 of this chapter. After June 8, 2010, such operations are not entitled to protection from fixed-satellite service operations and must not cause unacceptable interference to fixed-satellite service station operations. No new licenses will be granted in these bands after June 8, 2000.

(f) MDS H-channel applications. Frequencies in the bands 2650–2656 MHz, 2662–2668 MHz, or 2674–2680 MHz must be assigned only in accordance with the following conditions: All applications for MDS H-channel stations must specify either the H1, H2, or H3 channel for which an application is filed; however, the Commission may on its own initiative assign different channels in these frequency bands if it is determined that such action would serve the public interest.

(g) Frequencies in the bands 2150–2162 MHz, 2596–2644 MHz, 2650–2656 MHz, 2662–2668 MHz and 2674–2680 MHz are available for point-to-multipoint use and/or for communications between MDS response stations and response station hubs when authorized in accordance with the provisions of § 21.909, provided that such frequencies may be employed for MDS response stations only when transmitting using digital modulation.

[44 FR 60534, Oct. 19, 1979, as amended at 48 FR 33900, July 26, 1983; 49 FR 25479, June 21, 1984; 49 FR 37777, Sept. 26, 1984; 55 FR 46009, Oct. 31, 1990; 56 FR 57598, Nov. 13, 1991; 56 FR 57817, Nov. 14, 1991; 58 FR 11798, Mar. 1, 1993; 58 FR 44895, Aug. 25, 1993; 60 FR 36552, July 17, 1995; 61 FR 26676, May 28, 1996; 63 FR 65102, Nov. 25, 1998; 64 FR 4054, Jan. 27, 1999; 64 FR 63731, Nov. 22, 1999; 65 FR 54169, Sept. 7, 2000]

EFFECTIVE DATE NOTE: At 65 FR 54169, Sept. 7, 2000, § 21.901 was amended by revising paragraph (e), effective Oct. 10, 2000. For the convenience of the user, the superseded text is set forth as follows:

§ 21.901 Frequencies.

* * * * *

(e) Frequencies in the band segments 18,580–18,820 MHz and 18,920–19,160 MHz are available for assignment to fixed stations in this service for a point-to-point return link from a subscriber's location. Assignments in the 18 GHz band for these return links will be made in accordance with the provisions of subpart I of part 101 of this chapter.

* * * * *

§ 21.902 Interference.

(a) All applicants, conditional licensees, and licensees shall make exceptional efforts to avoid harmful interference to other users and to avoid blocking potential adjacent channel use in the same city and cochannel use in nearby cities. In areas where major

cities are in close proximity, careful consideration should be given to minimum power requirements and to the location, height, and radiation pattern of the transmitting antenna. Licensees, conditional licensees, and applicants are expected to cooperate fully in attempting to resolve problems of potential interference before bringing the matter to the attention of the Commission.

(b) As a condition for use of frequency in this service, each applicant, conditional licensee, and licensee is required to:

(1) Not enter into any lease or contract or otherwise take any action that would unreasonably prohibit location of another station's transmitting antenna at any given site inside its own protected service area.

(2) Cooperate fully and in good faith to resolve interference and transmission security problems.

(3) Engineer the system to provide at least 45 dB of cochannel interference protection within the 56.33 km (35 mile) protected service area of any authorized or previously-proposed ITFS or incumbent MDS station, and at each previously-registered ITFS receive site registered as of September 17, 1998 (or the appropriate value for bandwidths other than 6 MHz.)

(4) Engineer the station to provide at least 0 dB of adjacent channel interference protection within the 56.33 km (35 mile) protected service area of any authorized or previously-proposed ITFS or incumbent MDS station, and at each previously-registered ITFS receive site registered as of September 17, 1998 (or the appropriate value for bandwidths other than 6 MHz.)

(5)(i) Engineer the station to limit the calculated free space power flux density to -73 dBW/m^2 (or the appropriate value for bandwidth other than 6 MHz) at the boundary of a 56.33 km (35 mile) protected service area, where there is an unobstructed signal path from the transmitting antenna to the boundary; or alternatively, obtain the written consent of the entity authorized for the adjoining area to exceed the -73 dBW/m^2 limiting signal strength at the common boundary.

(ii) In determining signal path conditions, the following shall be used: a 9.1 meter (30 feet) receiving antenna height, the transmitting antenna height, terrain elevations and 4/3 earth radius propagation conditions.

(6) If a proposed station is within 80 km (50 miles) of the Canadian or Mexican border, the station must be designed to meet the requirements set forth in international treaties.

(7) Notwithstanding the above, main, booster and response stations shall use the following formulas, as applicable, for determining compliance with: (1) Radiated field contour limits where bandwidths other than 6 MHz are employed at stations utilizing digital emissions; and (2) Cochannel and adjacent channel D/U ratios where the bandwidths in use at the interfering and protected stations are unequal and both stations are utilizing digital modulation or one station is utilizing digital modulation and the other station is utilizing either 6 MHz NTSC analog modulation or 125 kHz analog modulation (I channels only).

(i) Contour limit: -73 dBW/m^2 + 10 log(X/6) dBW/m^2, where X is the bandwidth in MHz of the digital channel.

(ii) Co-channel D/U: 45 dB + 10 log(X_1/X_2) dB, where X_1 is the bandwidth in MHz of the protected channel and X_2 is the bandwidth in MHz of the interfering channel.

(iii) Adjacent channel D/U: 0 dB + 10 log(X_1/X_2), dB where X_1 is the bandwidth in MHz of the protected channel and X_2 is the bandwidth in MHz of the interfering channel.

(c) The following interference studies must be prepared:

(1) An analysis of the potential for harmful interference within the 56.33 km (35 mile) protected service areas of any authorized or previously proposed incumbent station:

(i) If the coordinates of the applicant's proposed transmitter are within 160.94 km (100 miles) of the center coordinates of any authorized or previously proposed incumbent station with protected service area of 56.33 km (35 miles) as specified in §21.902(d); or

(ii) If the great circle path between the applicant's proposed transmitter and the protected service area of any authorized, or previously-proposed, cochannel or adjacent-channel station(s) is within 241.4 kilometers or less and 90

percent or more of the path is over water or within 16.1 kilometers of the coast or shoreline of the Atlantic Ocean, the Pacific Ocean, the Gulf of Mexico, any of the Great Lakes, or any bay associated with any of the above (see §§ 21.901(a) and 74.902 of this chapter);

(2) Applicants may design interference studies in any manner that demonstrates the avoidance of harmful interference, as defined in this subpart.

(i) In lieu of interference studies, applicants may submit in accordance with § 21.938 a written statement of no objection to the operation of the MDS station.

(ii) The Commission may direct applicants to submit interference studies of a specific nature.

(3) Except for new stations proposed in applications filed after September 15, 1995, in the case of a proposal to operate a non-colocated station within the protected service area of an authorized, or previously proposed, adjacent channel station, an analysis that identifies the areas within the protected service areas of both the authorized or previously proposed adjacent channel station and the proposed station that cannot be protected as specified in § 21.902(b)(4) and an explanation of why the proposed station cannot be colocated with the existing or previously proposed station.

(4) In the case of a proposal for use of channel 2, an analysis of the potential for harmful interference with any authorized point-to-point station located within 80.5 kilometers (50 miles) which utilizes the 2160–2162 MHz band; and

(d)(1) Subject to the limitations contained in paragraph (e) of this section, each MDS station licensee shall be protected from harmful electrical interference, as determined by the theoretical calculations, within a protected service area of which the boundary will be 56.3255 kilometers (35 miles) from the transmitter site.

(2) As of September 15, 1995, the location of these protected service area boundaries shall become fixed. The center of the circular area shall be the geographic latitude and longitude of the transmitting antenna site specified in station authorizations or previously proposed applications filed at the Commission before September 15, 1995. Subsequent transmitter site changes will not change the location of the 56.3255 kilometers (35 mile) protected service area boundaries.

(e) No MDS licensee will be protected from harmful interference caused by:

(1) Any station with an earlier filing date.

(2) Any station that was authorized before July 1984.

(3) Any multichannel MDS station whose application was pending on September 9, 1983.

(f) In addressing potential harmful interference in this service, the following definitions, procedures and other criteria shall apply:

(1) Cochannel interference is defined as the ratio of the desired signal to the undesired signal present in the desired channel, at the output of a reference receiving antenna oriented to receive the maximum desired signal. Harmful interference will be considered present when a calculation using a terrain sensitive signal propagation model determines that this ratio is less than 45 dB (or the appropriate value for bandwidths other than 6 MHz.)

(2) Adjacent channel interference is defined as the ratio of the desired signal to undesired signal present in an adjacent channel, at the output of a reference receiving antenna oriented to receive the maximum desired signal level.

(i) Harmful interference will be considered present when a calculation using a terrain sensitive model determines that this ratio is less than 0dB (or the appropriate value for bandwidths other than 6 MHz.)

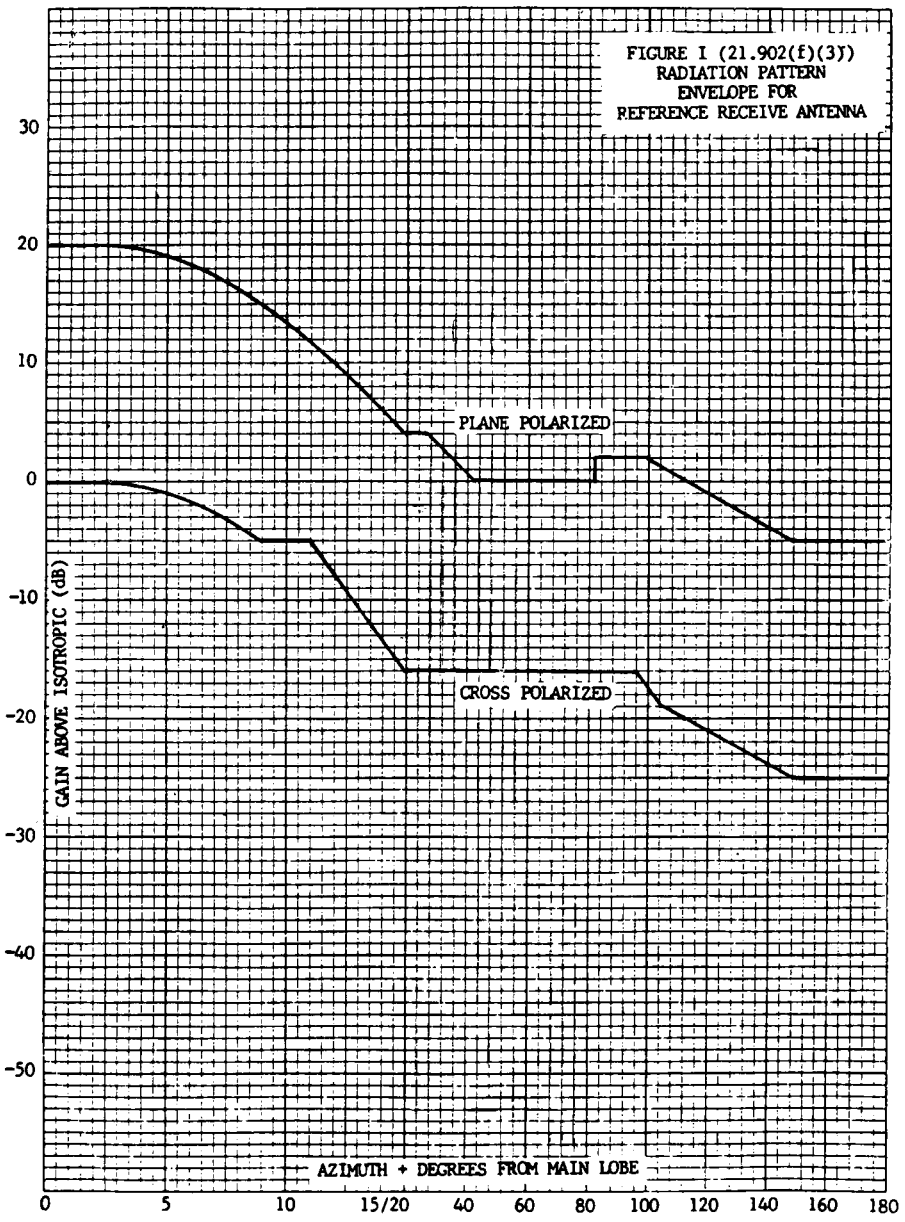
(ii) In the alternative, harmful interference will be considered present for an ITFS station constructed before May 26, 1983, when a calculation using a terrain-sensitive propagation model determines that this ratio is less than 10 dB (or the appropriate value for bandwidths other than 6 MHz.) unless:

(A) The individual receive site under consideration has been subsequently upgraded with up-to-date reception equipment, in which case the ratio shall be less than 0 dB. Absent information presented to the contrary, however, the Commission will assume that

reception equipment installation occurred simultaneously with original station equipment; or

(B) The license for an MDS station is conditioned on the proffer to the affected ITFS station licensee of equipment capable of providing a ratio of 0 dB or more at no expense to the ITFS station licensee, and also conditioned, if necessary, on the proffer of installation of such equipment; and there has been no showing by the affected ITFS station licensee demonstrating good cause and that the proposed equipment will not provide a ratio of 0 dB or more, or that installation of such equipment, at no expense to the ITFS station licensee, is not possible or has not been proffered.

(3) For purposes of this section all interference calculations involving receive antenna performance shall use the reference antenna characteristics shown in figure 1.



(4) For purposes of this section, the received signal power level $(RSL)_{dBW}$ at the output of the FCC reference receiving antenna is obtained from the following formulas (or an equivalent adaptation):

$(RSL)_{dBW}=(EIRP)_{dBW}-(L_{FS})_{dB}+(G_{AR})_{dB}$

where the free space loss (L_{FS}) is

$(L_{FS})_{dB}=20 \log (4_d/)_{dB}$

in which the parameters are defined as follows:

$(RSL)_{dBW}$ is the received power in decibels referenced to one watt.

$(EIRP)_{dBW}$ is the equivalent isotropically radiated power in decibels above one watt.

d is the distance of the signal path in meters.

λ is the wavelength of the signal in meters.

G_{AR} is the dB gain of the reference receiving antenna above an isotropic antenna (obtained from Figure 1 of this section.)

(5) A determination of signal path conditions shall use a 9.1 meters (30 feet) receiving antenna height, the transmitting antenna height, terrain elevation, and assume 4/3 earth radius propagation conditions.

(6) An application will not be accepted for filing if cochannel or adjacent channel interference is predicted at the boundary of the 56.33 km (35 mile) protected service area of an authorized or previously proposed incumbent station based on the following criteria:

(i) Interference calculations shall be made only for directions where there is an unobstructed signal path from the site of a proposed station to the boundary of any protected area.

(ii) Calculations of received power levels in units of dBW from the proposed station will be made at one degree intervals around the protected service area.

(iii) The assumed value of the desired signal level at the boundary of an incumbent station shall be −83 dBW, which is the calculated received power in free space at a distance of 56.33 km (35 miles), given at EIRP of 2000 watts and a receiver antenna gain of 20 dBi.

(iv) Harmful interference will be considered to occur at locations along the boundary wherever the ratio between the desired signal level of −83 dBw and the received power from a proposed cochannel or adjacent channel station is less than 45 dB or 0 dB for cochannel or adjacent channel proposals, respectively.

(7) Alternatively, MDS applications will be accepted on the basis of an executed written interference agreement between potentially affected parties filed in accordance with §21.938.

(g)(1) All interference studies prepared pursuant to paragraph (c) of this section must be served on all licensees, conditional licensees, and applicants for the stations required to be studied by this section. This service must include a copy of the FCC application and occur on or before the date the application is filed with the Commission.

(2) MDS licensees, conditional licensees and applicants of facilities with 56.33 km (35 mile) protected service areas shall notify in writing the holders of authorizations for adjoining BTAs or PSAs of application filings for modified station licenses, provided the proposed facility would produce an unobstructed signal path to any location within the adjoining BTA or PSA. This service must include a copy of the FCC application and occur on or before the date the application is filed with the Commission.

(h) For purposes of §21.31(a), an MDS application, except for those applications filed on or after September 15, 1995, filed for a facility that would cause harmful electrical interference within the protected service area of any authorized or previously proposed station will be presumed to be mutually exclusive with the application for such authorized or previously proposed station.

(i)(1) For each application for a new station, or amendment thereto, proposing MDS facilities, filed on October 1, 1995, or thereafter, on or before the day the application or amendment is filed, the applicant must prepare an analysis demonstrating that operation of the MDS applicant's transmitter will not cause harmful electrical interference to each receive site registered as of September 17, 1998, nor within a protected service area as defined in paragraph (d)(1) of this section, of any cochannel or adjacent channel ITFS station licensed, with a conditional license, or proposed in a pending application on the day such MDS application is filed, with an ITFS transmitter site within 50 miles of the coordinates of the MDS station's proposed transmitter site.

(2) For each application described in paragraph (i)(1) of this section, the applicant must serve, by certified mail, return receipt requested, on or before the day the application or amendment

described in paragraph (i)(1) of this section is filed initially with the Commission, a copy of the complete MDS application or amendment, including each exhibit and interference study, described in paragraph (i)(1) of this section, on each ITFS licensee, conditional licensee, or applicant described in paragraph (i)(1) of this section.

(3) For each application described in paragraph (i)(1) of this section, the applicant must certify and file, with the application or amendment, its certification of its compliance with the requirements of paragraph (i)(2) of this section.

(4) For each application described in paragraph (i)(1) of this section, the applicant must file with the Commission in Washington, DC, on or before the 30th day after the application or amendment described in paragraph (i)(1) of this section is filed initially with the Commission, a written notice which contains the following:

(i) Caption—ITFS Service Notice;

(ii) Applicant's name, address, proposed service area and channel group, and application file number, if known;

(iii) A list of each ITFS licensee and conditional licensee described in paragraph (i)(1) of this section;

(iv) The address used for service to each ITFS licensee and conditional licensee described in paragraph (i)(1) of this section; and

(v) A list of the date each ITFS licensee and conditional licensee described in paragraph (i)(1) of this section received a copy of the complete application or amendment described in paragraph (i)(1) of this section; or a notation of lack of receipt by the ITFS licensee or conditional licensee of a copy of the complete application or amendment, on or before such 30th day, together with a description of the applicant's efforts for receipt by each such licensee or conditional licensee lacking receipt of the application.

(5) The public notices described in paragraph (i)(6) of this section are as follows:

(i) For initial applications for new MDS stations which participate in a lottery, this public notice is the notice announcing the selection of the applicant's application by lottery for qualification review.

(ii) For initial applications for new MDS stations which participate in a competitive bidding process, this public notice is the notice announcing the application of the winning bidder in the competitive bidding process has been accepted for filing.

(iii) For initial applications for new MDS stations which do not participate in a lottery or a competitive bidding process, this public notice is the notice announcing that the applicant's application is not mutually-exclusive with other MDS applications.

(iv) For MDS modification applications, this public notice is the notice announcing that the modification application has been accepted for filing.

(6)(i) Notwithstanding the provisions of Sections 1.824(c) and 21.30(a)(4), for each application described in paragraph (i)(1) of this section, each ITFS licensee and each ITFS conditional licensee described in paragraph (i)(1) of this section may file with the Commission, on or before the 30th day after the public notice described in paragraph (i)(5) of this section, a petition to deny the MDS application.

(ii) Except for the requirements as to the filing time deadline, this petition to deny must otherwise comply with the provisions of Section 21.30.

(iii) In addition, this ITFS petition to deny must:

(A) Identify the subject MDS application, including the applicant's name, station location, channel group, and application file number;

(B) Include a certificate of service demonstrating service on the subject MDS applicant by certified mail, return receipt requested, on or before the 30th day after the MDS public notice described in paragraph (i)(5) of this section;

(C) Include a demonstration that it made efforts to reach agreement with the MDS applicant but was unable to do so;

(D) Include an engineering analysis that operation of the proposed MDS station will cause harmful interference to its ITFS station;

(E) Include a demonstration, in those cases in which the MDS applicant's analysis is dependent upon modification(s) to the ITFS facility, that the harmful interference cannot be avoided

by the proposed substitution of new or modified equipment to be supplied and installed by the MDS applicant, at no expense to the ITFS licensee or conditional licensee; and

(F) Be limited to raising objections concerning the potential for harmful interference to its ITFS station, or concerning a failure by the MDS applicant to serve the ITFS licensee or conditional licensee with a copy of the complete application or amendment described in paragraph (i)(1) of this section.

(iv) The Commission will presume an ITFS licensee or conditional licensee described in paragraph (i)(1) of this section has no objection to operation of the MDS station, if the ITFS licensee or conditional licensee fails to file a petition to deny by the deadline prescribed in paragraph (i)(6)(i) of this section.

(j) If the initial application for facilities in the 2596–2644 frequency band was filed on September 9, 1983, an applicant proposing to modify such facilities must include with its modification application:

(1) An analysis demonstrating that the modification will not increase the size of the geographic area suffering harmful interference within the protected service area of existing or proposed co-channel or adjacent-channel facilities in the 2596–2644 MHz frequency band with a transmitter site within 80.5 km (50 miles) of the modifying station's transmitter site of the initial application for the interfered-with station was filed on September 9, 1983; and

(2) An analysis demonstrating that the modification will not cause harmful interference to any new portion of the protected service area of existing or proposed co-channel or adjacent-channel facilities in the 2596–2644 frequency band with a transmitter site within 80.5 km (50 miles) of the modifying station's transmitter site, if the initial application for the interfered-with station was filed on September 9, 1983.

(k) If an initial application for facilities in the 2596–2644 frequency band was filed on September 9, 1983, a licensee proposing to modify a constructed station may request exclusion from the interference analysis prescribed at §21.902(c) (1) and (2) with respect to another specified application for E or F channel facilities, if the modifying licensee files as part of its modification application a demonstration that:

(1) The MDS application for which exclusion is requested was proposed by an initial application filed on September 9, 1983;

(2) The MDS application for which exclusion is requested is not yet perfected by the submission of the information necessary for processing, as of the date of filing of the modification application; and

(3) A copy of the licensee's modification application, including the demonstration specified in this paragraph, was served on the MDS applicant for which exclusion is requested, on or before the date of filing of the modification application.

(l) Specific rules relating to response station hubs, booster stations, and 125 kHz channels are set forth in §§21.909, 21.913, 21.940, 74.939 of this chapter, 74.940 of this chapter and 74.985 of this chapter. To the extent those specific rules are inconsistent with any rules set forth above, those specific rules shall control.

(m) The following information formats and storage media are to be used in connection with applications for new and modified MDS and ITFS stations:

(1) The data file prepared for submission to the Commission's Reference Room pursuant to the requirements set out at paragraph 74 of Appendix D to the *Report and Order* in MM Docket 97–217, FCC 98–231, must be in ASCII format on either CD–ROMs or 3.5″ diskettes. Any supplementary information submitted in connection with Appendix D may be in either ASCII or PDF format (graphics must be in PDF format) on either CD–ROMs or 3.5″ diskettes. Applicants serving such data/information on other applicants and/or licensees should do so using the same format(s) and media as used in their submission to the Commission's Reference Room.

(2) Demonstrations and certifications prepared for submission to the Commission's Reference Room may be in either hard copy or in ASCII or PDF format on CD–ROM's or 3.5″ diskettes.

(Graphics must be either hard copy or PDF format) Applicants serving such demonstrations and certifications on other applicants and/or licensees should do so using the same format(s) and media as used in their submission to the Commission's Reference Room.

[44 FR 60534, Oct. 19, 1979, as amended at 48 FR 33901, July 26, 1983; 49 FR 25479, June 21, 1984; 52 FR 27556, July 22, 1987; 55 FR 46010, Oct. 31, 1990; 56 FR 57598, Nov. 13, 1991; 56 FR 57818, Nov. 14, 1991; 56 FR 65191, Dec. 16, 1991; 58 FR 11798, Mar. 1, 1993; 58 FR 44895, Aug. 25, 1993; 60 FR 36553, July 17, 1995; 60 FR 36739, July 18, 1995; 60 FR 57367, Nov. 15, 1995; 61 FR 18098, Apr. 24, 1996; 61 FR 26676, May 28, 1996; 63 FR 65102, Nov. 25, 1998; 64 FR 63731, Nov. 22, 1999; 65 FR 46617, July 31, 2000]

EFFECTIVE DATE NOTE: At 65 FR 46617, July 31, 2000, §21.902 was amended by adding paragraph (m). This paragraph contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 21.903 Purpose and permissible service.

(a) Multipoint Distribution Service channels are available for transmissions from MDS stations and associated MDS signal booster stations to receive locations, and from MDS response stations to response station hubs. When service is provided on a common carrier basis, subscriber supplied information is transmitted to points designated by the subscriber. When service is provided on a non-common carrier basis, transmissions may include information originated by persons other than the licensee, licensee-manipulated information supplied by other persons, or information originated by the licensee. Point-to-point radio return links from a subscriber's location to a MDS operator's facilities may also be authorized in the 18,580 through 18,820 MHz and 18,920 through 19,160 MHz bands. Rules governing such operation are contained in subpart I of part 101 of this chapter, the Point-to-Point Microwave Radio Service.

(b) Unless otherwise directed or conditioned in the applicable instrument of authorization, Multipoint Distribution Service stations may render any kind of communications service consistent with the Commission's rules on a common carrier or on a non-common carrier basis, *Provided* That:

(1) Unless service is rendered on a non-common carrier basis, the common carrier controls the operation of all receiving facilities (e.g., including any equipment necessary to convert the signal to a standard television channel, but excluding the television receiver); and

(2) Unless service is rendered on a non-common carrier basis, the common carrier's tariff allows the subscriber the option of owning the receiving equipment (except for the decoder) so long as:

(i) The customer provides the type of equipment as specified in the tariff;

(ii) Such equipment is in suitable condition for the rendition of satisfactory service; and

(iii) Such equipment is installed, maintained, and operated pursuant to the common carrier's instructions and control.

(c) The carrier's tariff shall fully describe the parameters of the service to be provided, including the degree of privacy of communications a subscriber can expect in ordinary service. If the ordinary service does not provide for complete security of transmission, the tariff shall make provision for service with such added protection upon request.

(d) An MDS licensee also may alternate, without further authorization required, between rendering service on a common carrier and non-common carrier basis, provided that the licensee notifies the Commission of any service status changes at least 30 days in advance of such changes. The notification shall state whether there is any affiliation or relationship to any intended or likely subscriber or program originator.

[44 FR 60534, Oct. 19, 1979, as amended at 52 FR 27556, July 22, 1987; 61 FR 26676, May 28, 1996; 63 FR 65103, Nov. 25, 1998; 64 FR 4054, Jan. 27, 1999; 64 FR 63732, Nov. 22, 1999]

§ 21.904 EIRP limitations.

(a) The maximum EIRP of a main or booster station shall not exceed 33 dBW

+ 10log(X/6) dBW, where X is the actual bandwidth if other than 6 MHz, except as provided in paragraph (b) of this section.

(b)(i) If a main or booster station sectorizes or otherwise uses one or more transmitting antennas with a non-omnidirectional horizontal plane radiation pattern, the maximum EIRP in a given direction shall be determined by the following formula:

EIRP = 33 dBW + 10 log(X/6) dBW + 10 log(360/beamwidth) dBW, where X is the channel width in MHz and 10 log(360/beamwidth) ≤ 6 dB.

(ii) Beamwidth is the total horizontal plane beamwidth of the individual transmitting antenna for the station or any sector measured at the half-power points.

(c) An increase in station EIRP, above currently-authorized or previously-proposed values, to the maximum values provided in paragraphs (a) and (b) of this section may be authorized, if the requested increase would not cause harmful interference to any authorized or previously-proposed, cochannel or adjacent channel station entitled to interference protection under the Commission's rules, or if an applicant demonstrates that:

(1) A station that must be protected from interference could compensate for interference by increasing its EIRP; and

(2) The interfered-with station may increase its own EIRP consistent with the rules and without causing harmful interference to any cochannel or adjacent channel main or booster station protected service area, response station hub or BTA/PSA, for which consent for the increased interference has not been obtained; and

(3) The applicant requesting authorization of an EIRP increase agrees to pay all expenses associated with the increase in EIRP by the interfered-with station.

(d) For television transmission if the authorized bandwidth is 4.0 MHz or more for the visual and accompanying aural signal, the peak power of the accompanying aural signal must not exceed 10 percent of the peak visual power of the transmitter. The Commission may order a reduction in aural signal power to diminish the potential for harmful interference.

(e) For main, booster and response stations utilizing digital emissions with non-uniform power spectral density (*e.g.* unfiltered QPSK), the power measured within any 100 kHz resolution bandwidth within the 6 MHz channel occupied by the non-uniform emission cannot exceed the power permitted within any 100 kHz resolution bandwidth within the 6 MHz channel if it were occupied by an emission with uniform power spectral density, *i.e.*, if the maximum permissible power of a station utilizing a perfectly uniform power spectral density across a 6 MHz channel were 2000 watts EIRP, this would result in a maximum permissible power flux density for the station of 2000/60 = 33.3 watts EIRP per 100 kHz bandwidth. If a non-uniform emission were substituted at the station, station power would still be limited to a maximum of 33.3 watts EIRP within any 100 kHz segment of the 6 MHz channel, irrespective of the fact that this would result in a total 6 MHz channel power of less than 2000 watts EIRP.

[64 FR 63732, Nov. 22, 1999]

§ 21.905 Emissions and bandwidth.

(a) A station transmitting a television signal shall not exceed a bandwidth of 6 MHz (for both visual signal and accompanying aural signal), and will normally employ vestigial sideband, amplitude modulation (C3F) for the visual signal, and frequency modulation (F3E) or (G3E) for the accompanying aural signal.

(b) Quadrature amplitude modulation (QAM), digital vestigial sideband modulation (VSB), quadrature phase shift key modulation (QPSK), code division multiple access (CDMA), and orthogonal frequency division multiplex (OFDM) emissions may be employed, subject to compliance with the policies set forth in the Declaratory Ruling and Order, 11 FCC Rcd 18839 (1996). Use of OFDM also is subject to the subsequent Declaratory Ruling and Order, DA 99–554 (Mass Med. Bur. rel. Mar. 19, 1999). Other digital emissions may be added to those authorized above, including emissions with non-uniform power spectral density, if the applicant provides information in accordance with

the guidelines and procedures set forth in the Declaratory Ruling and Order which clearly demonstrates the spectral occupancy and interference characteristics of the emission. The licensee may subchannelize its authorized bandwidth, provided that digital modulation is employed and the aggregate power does not exceed the authorized power for the channel, and may utilize all or a portion of its authorized bandwidth for MDS response stations authorized pursuant to §21.909 of this part. The licensee may also, jointly with affected adjacent channel licensees, transmit utilizing bandwidth in excess of its authorized frequencies, provided that digital modulation is employed, all power spectral density requirements set forth in this part are met and the out-of-band emissions restrictions set forth in §21.908 of this part are met at and beyond the edges of the channels employed. The wider channels thus created may be redivided to create narrower channels.

(c) Any licensee of a station in the 2150–2162 MHz or 2596–2644 MHz, 2650–2656 MHz, 2662–2668 MHz, or 2674–2680 MHz frequency bands, after notice and opportunity for hearing, may be required to use the frequency offset technique to avoid or to minimize harmful interference to another licensed station in the 2150–2162 MHz and 2596–2544 MHz, 2650–2656 MHz, 2662–2668 MHz, and 2674–2680 MHz frequency bands or to make other changes as provided in §§21.100, 21.107, 21.900, 21.901, 21.902, 21.904, 21.905(a), 21.905(b), 21.906, 21.907, and 21.908 of this part.

(d) Notwithstanding the above, any digital emission which complies with the out-of-band emission restrictions of §21.908 of this part may be used in the following circumstances:

(1) At any MDS main or booster station transmitter which is located more than 160.94 km (100 miles) from the nearest boundary of all cochannel and adjacent channel ITFS and MDS protected service areas, including Basic Trading Areas and Partitioned Service Areas; and

(2) At all MDS response station transmitters within a response service area if all points along the response service area boundary line are more than 160.94 km (100 miles) from the nearest boundary of all cochannel and adjacent channel ITFS and MDS protected service areas, including Basic Trading Areas and Partitioned Service Areas; and

(3) At any MDS transmitter where all parties entitled by this part to interference protection from that transmitter have mutually consented to the use at that transmitter of such emissions.

[44 FR 60534, Oct. 19, 1979, as amended at 49 FR 48700, Dec. 14, 1984; 55 FR 46011, Oct. 31, 1990; 56 FR 57818, Nov. 14, 1991; 63 FR 65104, Nov. 25, 1998; 64 FR 4054, Jan. 27, 1999; 64 FR 63732, Nov. 22, 1999]

§ 21.906 Antennas.

(a) Main and booster station transmitting antennas shall be omnidirectional, except that a directional antenna with a main beam sufficiently broad to provide adequate service may be used either to avoid possible interference with other users in the frequency band, or to provide coverage more consistent with distribution of potential receiving points. In lieu of an omnidirectional antenna, a station may employ an array of directional antennas in order to reuse spectrum efficiently. When an applicant proposes to employ a directional antenna, or a licensee notifies the Commission pursuant to §21.42 of the installation of a sectorized antenna system, the applicant shall provide the Commission with information regarding the orientation of the directional antenna(s), expressed in degree of azimuth, with respect to true north, and the make and model of such antenna(s).

(b) The use of horizontal or vertical plane wave polarization, or right hand or left hand rotating elliptical polarization may be used to minimize the hazard of harmful interference between systems.

(c) Transmitting antennas located within 56.3 kilometers (35 miles) of the Canadian border should be directed so as to minimize, to the extent that is practical, emissions toward the border.

(d) Directive receiving antennas shall be used at all points other than response station hubs and response stations operating with an EIRP no greater than −6 dBW per 6 MHz channel and

shall be elevated no higher than necessary to assure adequate service. Receiving antenna height shall not exceed the height criteria of Part 17 of this chapter, unless authorization for use of a specific maximum height (above ground and mean sea level) for each location has been obtained from the Commission prior to the erection of the antenna. (See part 17 of this chapter concerning construction, marking and lighting of antenna structures.) A response station operating with an EIRP no greater than −6 dBW per 6 MHz channel may use an omnidirectional receiving antenna. However, for the purpose of interference protection, such response stations will be treated as if utilizing a receive antenna meeting the requirements of the reference receiving antenna of Figure 1 of §21.902(f)(3).

[44 FR 60534, Oct. 19, 1979, as amended at 52 FR 37786, Oct. 9, 1987; 58 FR 44896, Aug. 25, 1993; 63 FR 65104, Nov. 25, 1998; 64 FR 4054, Jan. 27, 1999; 64 FR 63733, Nov. 22, 1999; 65 FR 46617, July 31, 2000]

§21.907 [Reserved]

§21.908 Transmitting equipment.

(a) Except as otherwise provided in this section, the requirements of paragraphs (a), (b), (c), (d), and (e) of §73.687 of this chapter shall apply to stations in this service transmitting standard television signals.

EDITORIAL NOTE: At 63 FR 65104, Nov. 25, 1999, paragraph (b) was redesignated as paragraph (a) and newly designated paragraph (a) was revised. However, paragraph (a) already exists. The text of the newly redesignated paragraph (a) follows:

(a) The maximum out-of-band power of an MDS station transmitter or booster transmitting on a single 6 MHz channel with an EIRP in excess of −9 dBW employing analog modulation shall be attenuated at the channel edges by at least 38 dB relative to the peak visual carrier, then linearly sloping from that level to at least 60 dB of attenuation at 1 MHz below the lower band edge and 0.5 MHz above the upper band edge, and attenuated at least 60 dB at all other frequencies. The maximum out-of-band power of an MDS station transmitter or booster transmitting on a single 6 MHz channel or a portion thereof with an EIRP in excess of −9 dBW (or, when subchannels are used, the appropriately adjusted value based upon the ratio of the channel-to-subchannel bandwidths) employing digital modulation shall be attenuated at the 6 MHz channel edges at least 25 dB relative to the licensed average 6 MHz channel power level, then attenuated along a linear slope to at least 40 dB at 250 kHz beyond the nearest channel edge, then attenuated along a linear slope from that level to at least 60 dB at 3 MHz above the upper and below the lower licensed channel edges, and attenuated at least 60 dB at all other frequencies. Notwithstanding the foregoing, in situations where an MDS station or booster station transmits, or where adjacent channel licensees jointly transmit, a single signal over more than one contiguous 6 MHz channel utilizing digital modulation with an EIRP in excess of −9 dBW (or, when subchannels or superchannels are used, the appropriately adjusted value based upon the ratio of 6 MHz to the subchannel or superchannel bandwidth), the maximum out-of-band power shall be attenuated at the channel edges of those combined channels at least 25 dB relative to the power level of each channel, then attenuated along a linear slope from that level to at least 40 dB at 250 kHz above or below the channel edges of those combined channels, then attenuated along a linear slope from that level to at least 60 dB at 3 MHz above the upper and below the lower edges of those combined channels, and attenuated at least 60 dB at all other frequencies. However, should harmful interference occur as a result of emissions outside the assigned channel, additional attenuation may be required. A transmitter licensed prior to November 1, 1991, that remains at the station site initially licensed, and does not comply with this paragraph, may continue to be used for its life if it does not cause harmful interference to the operation of any other licensee. Any non-conforming transmitter replaced after November 1, 1991, must be replaced by a transmitter meeting the requirements of this paragraph.

(b) A booster transmitting on multiple contiguous or non-contiguous channels carrying separate signals (a

''broadband'' booster) with an EIRP in excess of −9 dBW per 6 MHz channel and employing analog, digital or a combination of these modulations shall have the following characteristics:

(1) For broadband boosters operating in the frequency range of 2.150–2.160/2 GHz, the maximum out-of-band power shall be attenuated at the upper and lower channel edges forming the band edges by at least 25 dB relative to the licensed analog peak visual carrier or digital average power level (or, when subchannels are used, the appropriately adjusted value based on upon the ratio of the channel-to-subchannel bandwidths), then linearly sloping from that level to at least 40 dB of attenuation at 0.25 MHz above and below the band edges, then linearly sloping from that level to at least 60 dB of attenuation at 3.0 MHz above and below the band edges, and attenuated at least 60 dB at all other frequencies.

(2) For broadband boosters operating in the frequency range of 2.500–2.690 GHz, the maximum out-of-band power shall be attenuated at the upper and lower channel edges forming the band edges by at least 25 dB relative to the licensed analog peak visual carrier or digital average power level (or, when subchannels are used, the appropriately adjusted value based on upon the ratio of the channel-to-subchannel bandwidths), then linearly sloping from that level to at least 40 dB of attenuation at 0.25 MHz above and below the band edges, then linearly sloping from that level to at least 50 dB of attenuation at 3.0 MHz above and below the band edges, then linearly sloping from that level to at least 60 dB of attenuation at 20 MHz above and below the band edges, and attenuated at least 60 dB at all other frequencies.

(3) Within unoccupied channels in the frequency range of 2.500–2.690 GHz, the maximum out-of-band power shall be attenuated at the upper and lower channel edges of an unoccupied channel by at least 25 dB relative to the licensed analog peak visual carrier power level or digital average power level of the occupied channels (or, when subchannels or 125 kHz channels are used, the appropriately adjusted value based upon the ratio of the channel-to-subchannel bandwidths), then linearly sloping from that level to at least 40 dB of attenuation at 0.25 MHz above and below the occupied channel edges, then linearly sloping from that level to at least 50 dB of attenuation at 3.0 MHz above and below the occupied channel edges, and attenuated at least 50 dB at all other unoccupied frequencies.

(c) Boosters operating with an EIRP less than -9 dBW per 6 MHz channel shall have no particular out-of-band power attenuation requirement, except that if they cause harmful interference, their operation shall be terminated within 2 hours of notification by the Commission until the interference can be cured.

(d) The maximum out-of-band power of an MDS response station using all or part of a 6 MHz channel, employing digital modulation and transmitting with an EIRP greater than –6 dBW per 6 MHz channel shall be attenuated (as measured in accordance with paragraph (e) of this section) at the 6 MHz channel edges at least 25 dB relative to the average 6 MHz channel power level, then attenuated along a linear slope to at least 40 dB at 250 kHz beyond the nearest channel edge, then attenuated along a linear slope from that level to at least 60 dB at 3 MHz above the upper and below the lower licensed channel edges, and attenuated at least 60 dB at all other frequencies. The maximum out-of-band power of an MDS response station using all or part of a 6 MHz channel, employing digital modulation and transmitting with an EIRP no greater than –6 dBW per 6 MHz channel shall be attenuated (as measured in accordance with paragraph (e) of this section) at the channel edges at least 25 dB relative to the average 6 MHz channel transmitter output power level (P), then attenuated along a linear slope to at least 40 dB or 33+10log(P) dB, whichever is the lesser attenuation, at 250 kHz beyond the nearest channel edge, then attenuated along a linear slope from that level to at least 60 dB or 43+10log(P) dB, whichever is the lesser attenuation, at 3 MHz above the upper and below the lower licensed channel edges, and attenuated at least 60 dB or 43+10log(P) dB, whichever is the lesser attenuation, at all other frequencies.

Where MDS response stations with digital modulation utilize all or part of more than one contiguous 6 MHz channel to form a larger channel (*e.g.*, a channel of width 12 MHz), the above-specified attenuations shall be applied only at the upper and lower edges of the overall combined channel. Notwithstanding these provisions, should harmful interference occur as a result of emissions outside the assigned channel(s), additional attenuation may be required by the Commission.

(e) In measuring compliance with the out-of-band emissions limitations, the licensee shall employ one of two methods in each instance: (1) absolute power measurement of the average signal power with one instrument, with measurement of the spectral attenuation on a separate instrument; or (2) relative measurement of both the average power and the spectral attenuation on a single instrument. The formula for absolute power measurements is to be used when the average signal power is found using a separate instrument, such as a power meter; the formula gives the amount by which the measured power value is to be attenuated to find the absolute power value to be used on the spectrum analyzer or equivalent instrument at the spectral point of concern. The formula for relative power measurements is to be used when the average signal power is found using the same instrument as used to measure the attenuation at the specified spectral points, and allows different resolution bandwidths to be applied to the two parts of the measurement; the formula gives the required amplitude separation (in dB) between the flat top of the (digital) signal and the point of concern.

For absolute power measurements:

$$\text{Attenuation in dB (below channel power)} = A + 10_{\log}\left(C_{BW} / R_{Bw}\right)$$

For relative power measurements:

$$\text{Attenuation in dB (below flat top)} = A + 10_{\log}\left(R_{BW1} / R_{BW2}\right)$$

Where:

A = Attenuation specified for spectral point (e.g., 25, 35, 40, 60 dB)

C_{BW} = *Channel bandwidth (for absolute power measurements)*

R_{BW} = *Resolution bandwidth (for absolute power measurements)*

R_{BW1} = *Resolution bandwidth for flat top measurement (relative)*

R_{BW2} = *Resolution bandwidth for spectral point measurement (relative)*

[55 FR 46011, Oct. 31, 1990, as amended at 56 FR 57818, Nov. 14, 1991; 63 FR 65105, Nov. 25, 1998; 65 FR 46617, July 31, 2000]

§ 21.909 MDS response stations.

(a) An MDS response station is authorized to provide communication by voice, video and/or data signals with its associated MDS response station hub or MDS station. An MDS response station may be operated only by the licensee of an MDS station, by any lessee of the MDS station or response station hub, or by a subscriber of either. The authorized channel may be divided to provide distinct subchannels for each of more than one response station, provided that digital modulation is employed and the aggregate power does not exceed the authorized power for the channel. An MDS response station may also, jointly with other licensees, transmit utilizing bandwidth in excess of that authorized to the station, provided that digital modulation is employed, all power spectral density requirements set forth in this part are met, and the out-of-band emissions restrictions set forth in §21.908(b) or paragraph (j) of this section are complied with. When a 125 kHz channel is employed, the specific channel which may be used by the response station is determined in accordance with §§21.901 and 74.939(j) of this chapter.

(b) MDS response stations that utilize the 2150–2162 MHz band, the 2500–2686 MHz band, and/or the 125 kHz channels may be installed and operated without an individual license, to communicate with a response station hub, provided that the conditions set forth in paragraph (g) of this section are met and that the MDS response stations' technical parameters are consistent with all applicable rules in this part and with the terms and conditions set out in the Commission's *Declaratory Ruling and Order*, 11 FCC Rcd 18839 (1996).

(c) An applicant for a response station hub license, or for modification thereto where not subject to §21.41 or §21.42, shall:

(1) File FCC Form 331 with Mellon Bank, and certify on that form that it has complied with the requirements of paragraphs (c)(2) and (d) of this section and that the interference data submitted under paragraph (d) of this section is complete and accurate. Failure to certify compliance and to comply completely with the requirements of paragraphs (c)(2) and (d) of this section shall result in dismissal of the application or revocation of the response station hub license, and may result in imposition of a monetary forfeiture; and

(2) Submit the following (see § 21.902(m) for permissible formats and media) to the Commission's Reference Room:

(i) The data files required by Appendix D to the *Report and Order* in MM Docket 97–217, FCC 98–231, ''Methods For Predicting Interference From Response Station Transmitters And To Response Station Hubs And For Supplying Data on Response Station Systems''; and

(ii) The demonstrations and certifications required by paragraph (d) of this section.

(d) An applicant for a response station hub license shall prepare the following:

(1) A demonstration describing the system channel plan, to the extent that such information is not contained in the data file required in (c)(2)(i) of this section; and

(2) A demonstration that:

(i) The proposed response station hub is within a protected service area, as defined in § 21.902(d) or § 21.933, to which the applicant is entitled either:

(A) by virtue of its being the licensee of an incumbent MDS station whose channels are being converted for MDS response station use; or

(B) by virtue of its holding a Basic Trading Area or Partitioned Service Area authorization. In the case of an application for response stations to utilize one or more of the 125 kHz response channels, such demonstration shall establish that the response station hub is within the protected service area of the station authorized to utilize the associated E-Group or F-Group channel(s); and

(ii) The entire proposed response service area is within a protected service area to which the applicant is entitled either (A) by virtue of its being the licensee of an incumbent MDS station whose channels are being converted for MDS response station use; or (B) by virtue of its holding a Basic Trading Area or Partitioned Service Area authorization. In the alternative, the applicant may demonstrate that the licensee entitled to any cochannel protected service area which is overlapped by the proposed response service area has consented to such overlap. In the case of an application for response stations to utilize one or more of the 125 kHz response channels, such demonstration shall establish that the response service area is entirely within the protected service area of the station authorized to utilize the associated E-Group or F-Group channel(s), or, in the alternative, that the licensee entitled to any cochannel protected service area which is overlapped by the proposed response service area has consented to such overlap; and

(iii) The combined signals of all simultaneously operating MDS response stations within all response service areas and oriented to transmit towards their respective response station hubs, and all cochannel MDS stations and booster stations licensed to or applied for by the applicant will not generate a power flux density in excess of -73 dBW/m^2 (or the appropriately adjusted value based on the actual bandwidth used if other than 6 MHz, see § 21.902(b)(7)(i)) outside the boundaries of the applicant's protected service area, as measured at locations for which there is an unobstructed signal path, except to the extent that consent of affected licensees has been obtained or consents have been granted pursuant to paragraph (d)(3)(ii) of this section to an extension of the response service area beyond the boundaries of the protected service area; and

(iv) The combined signals of all simultaneously operating MDS response stations within all response service areas and oriented to transmit towards their respective response station hubs, and all cochannel MDS stations and booster stations licensed to or applied for by the applicant, will result in a desired to undesired signal ratio of at

least 45 dB (or the appropriately adjusted value based on the actual bandwidth used if other than 6 MHz, see § 21.902(b)(7)(ii)):

(A) within the protected service area of any authorized or previously-proposed cochannel MDS or ITFS station with a 56.33 km (35 mile) protected service area with center coordinates located within 160.94 km (100 miles) of the proposed response station hub; and

(B) within the booster service area of any cochannel booster station entitled to such protection pursuant to §§ 21.913(f) or 74.985(f) of this chapter and located within 160.94 km (100 miles) of the proposed response station hub; and

(C) at any registered receive site of any authorized or previously-proposed cochannel ITFS station or booster station located within 160.94 km (100 miles) of the proposed response station hub, or, in the alternative, that the licensee of or applicant for such cochannel station or hub consents to the application; and

(v) The combined signals of all simultaneously operating MDS response stations within all response service areas and oriented to transmit towards their respective response station hubs, and all cochannel MDS stations and booster stations licensed to or applied for by the applicant, will result in a desired to undesired signal ratio of at least 0 dB (or the appropriately adjusted value based on the actual bandwidth used if other than 6 MHz, see § 21.902(b)(7)(iii)):

(A) within the protected service area of any authorized or previously-proposed adjacent channel MDS or ITFS station with a 56.33 km (35 mile) protected service area with center coordinates located within 160.94 km (100 miles) of the proposed response station hub; and

(B) within the booster service area of any adjacent channel booster station entitled to such protection pursuant to §§ 21.913(f) or 74.985(f) of this chapter and located within 160.94 km (100 miles) of the proposed response station hub; and

(C) at any registered receive site of any authorized or previously-proposed adjacent channel ITFS station or booster station located within 160.94 km (100 miles) of the proposed response station hub, or, in the alternative, that the licensee of or applicant for such adjacent channel station or hub consents to the application; and

(vi) The combined signals of all simultaneously operating MDS response stations within all response service areas and oriented to transmit towards their respective response station hub and all cochannel MDS stations and booster stations licensed to or applied for by the applicant will comply with the requirements of paragraph (i) of this section and § 74.939(i) of this chapter.

(3) A certification that the application has been served upon

(i) the holder of any cochannel or adjacent channel authorization with a protected service area which is overlapped by the proposed response service area;

(ii) the holder of any cochannel or adjacent channel authorization with a protected service area that adjoins the applicant's protected service area;

(iii) the holder of a cochannel or adjacent channel authorization for any BTA or PSA inside whose boundaries are locations for which there is an unobstructed signal path for combined signals from within the response station hub applicant's protected service area; and

(iv) every licensee of, or applicant for, any cochannel or adjacent channel, authorized or previously-proposed, incumbent MDS station with a 56.33 km (35 mile) protected service area with center coordinates located within 160.94 km (100 miles) of the proposed response station hub;

(v) every licensee of, or applicant for, any cochannel or adjacent channel, authorized or previously-proposed ITFS station (including any booster station or response station hub) located within 160.94 km (100 miles) of the proposed response station hub; and

(vi) every licensee of any non-cochannel or non-adjacent channel ITFS station (including any booster station) with one or more registered receive sites in, or within 1960 feet of the proposed response station service area.

(e) Except as set forth in § 21.27(d), applications for response station hub licenses may be filed at any time. Notwithstanding any other provision of

part 21 (including §21.31), applications for response station hub licenses meeting the requirements of paragraph (c) of this section shall cut-off applications that are filed on a subsequent day for facilities that would cause harmful electromagnetic interference to the proposed response station hubs. A response station hub shall not be entitled to protection from interference caused by facilities proposed on or prior to the day the application for the response station hub license is filed. Response stations shall not be required to protect from interference facilities proposed on or after the day the application for the response station hub license is filed.

(f) Notwithstanding the provisions of §21.30(b)(4) and except as set forth in §21.27(d), any petition to deny an application for a response station hub license shall be filed no later than the sixtieth (60th) day after the date of public notice announcing the filing of such application or major amendment thereto. Notwithstanding §21.31 and except as provided in §21.27(d), an application for a response station hub license that meets the requirements of this section shall be granted on the sixty-first (61st) day after the Commission shall have given public notice of the acceptance for filing of it, or of a major amendment to it if such major amendment has been filed, unless prior to such date either a party in interest timely files a formal petition to deny or for other relief pursuant to §21.30(a), or the Commission notifies the applicant that its application will not be granted. Where an application is granted pursuant to the provisions of this paragraph, the conditional licensee or licensee shall maintain a copy of the application at the response station hub until such time as the Commission issues a response station hub license.

(g) An MDS response station hub license shall be conditioned upon compliance with the following:

(1) No MDS response station shall be located beyond the response service area of the response station hub with which it communicates; and

(2) No MDS response station shall operate with a transmitter output power in excess of 2 watts; and

(3) No response station shall operate with an EIRP in excess of that specified in the application for the response station hub for the particular regional class of characteristics with which the response station is associated, and such response station shall not operate with an EIRP in excess of 33 dBW + 10log(X/6) dBW, where X is the channel width in MHz, and

(4) Each response station shall employ a transmission antenna oriented towards the response station hub with which the response station communicates and such antenna shall be no less directive than the worst-case outer envelope pattern specified in the application for the response station hub for the regional class of characteristics with which the response station is associated; and

(5) The combined out-of-band emissions of all response stations using all or part of one or multiple contiguous 6 MHz channels and employing digital modulation shall comply with §21.908(d). The combined out-of-band emissions of all response stations using all or part of one or multiple contiguous 125 kHz channels shall comply with paragraph (j) of this section. However, should harmful interference occur as a result of emissions outside the assigned channel, additional attenuation may be required; and

(6) The response stations transmitting simultaneously at any given time within any given region of the response service area utilized for purposes of analyzing the potential for interference by response stations shall conform to the numerical limits for each class of response station proposed in the application for the response station hub license. Notwithstanding the foregoing, where a response station hub licensee subchannelizes pursuant to §21.909(a) and limits the maximum EIRP emitted by any individual response station proportionately to the fraction of the channel that the response station occupies, the licensee may operate simultaneously on each subchannel the number of response stations specified in the license. Moreover, the licensee of a response station hub may alter the number of response stations of any class operated simultaneously in a given region, without

prior Commission authorization, provided that the licensee:

(i) Files with the Commission (see § 21.902(m) for permissible format(s) and media) a demonstration indicating the number of response stations of such class(es) to be operated simultaneously in such region and a certification that it has complied with the requirements of paragraphs (g)(6)(ii) and (iii) of this section and that the interference data submitted pursuant to paragraph (g)(6)(ii) is complete and accurate; and

(ii) Provides the Commission's Reference Room (see § 21.902(m) for permissible formats and media) with an update of the previously-filed response station data and with a demonstration that such alteration will not result in any increase in interference to the protected service area or protected receive sites of any existing or previously-proposed, cochannel or adjacent channel MDS or ITFS station or booster station, to the protected service area of any MDS Basic Trading Area or Partitioned Service Area licensee entitled to protection pursuant to paragraph (d)(3) of this section, or to any existing or previously-proposed, cochannel or adjacent channel response station hub, or response station under § 21.949 or § 74.949 of this chapter; or that the applicant for or licensee of such facility has consented to such interference; and

(iii) Serves a copy of such demonstration and certification upon each party entitled to be served pursuant to paragraph (d)(3) of this section; and

(7) Where an application is granted under this section, if a facility operated pursuant to that grant causes harmful, unauthorized interference to any cochannel or adjacent channel facility, it must promptly remedy the interference or immediately cease operations of the interfering facility, regardless of whether any petitions to deny or for other relief were filed against the application during the application process. The burden of proving that a facility operated under this section is not causing harmful, unauthorized interference lies on the licensee of the alleged interfering facility, following the filing of a documented complaint of interference by an affected party; and

(8) In the event any MDS or ITFS receive site suffers interference due to block downconverter overload, the licensee of each non-co/adjacent response station hub with a response service area within five miles of such receive site shall cooperate in good faith to expeditiously identify the source of the interference. Each licensee of a response station hub with an associated response station contributing to such interference shall bear the joint and several obligation to promptly remedy all block downconverter overload interference at any ITFS registered receive site or at any receive site within an MDS or ITFS protected service area applied for prior to the submission of the application for the response station hub license, regardless of whether the receive site suffering the interference was constructed prior to or after the construction of the response station(s) causing the downconverter overload; provided, however, that the licensee of the registered ITFS receive site or the MDS or ITFS protected service area must cooperate fully and in good faith with efforts by the response station hub licensee to prevent interference before constructing response stations and/or to remedy interference that may occur. In the event that the associated response station(s) of more than one response station hub licensee contribute(s) to block downconverter interference at an MDS or ITFS receive site, such hub licensees shall cooperate in good faith to remedy promptly the interference.

(h) Applicants must comply with Part 17 of this chapter concerning notification to the Federal Aviation Administration of proposed antenna construction or alteration for all hub stations and associated response stations.

(i) Response station hubs shall be protected from cochannel and adjacent channel interference in accordance with the following criteria:

(1) An applicant for any new or modified MDS or ITFS station (including any high-power booster station or response station hub) shall be required to demonstrate interference protection to a response station hub within 160.94 km (100 miles) of the proposed facilities. In

lieu of the interference protection requirements set forth in §§ 21.902(b)(3) through (b)(5), 21.938(b)(1) and (2) and (c), and 74.903 of this chapter, such demonstration shall establish that the proposed facility will not increase the effective power flux density of the undesired signals generated by the proposed facility and any associated main stations, booster stations or response stations at the response station hub antenna for any sector. In lieu of the foregoing, an applicant for a new MDS or ITFS main station license or for a new or modified response station hub or booster license may demonstrate that the facility will not increase the noise floor at a reception antenna of the response station hub by more than 1 dB for cochannel signals and 45 dB for adjacent channel signals, provided that:

(i) The entity submitting the application may only invoke this alternative once per response station hub reception sector; or

(ii) The licensee of the affected response station hub may consent to receive a certain amount of interference at its hub.

(2) Commencing upon the filing of an application for an MDS response station hub license and until such time as the application is dismissed or denied or, if the application is granted, a certification of completion of construction is filed, the MDS station whose channels are being utilized shall be entitled both to interference protection pursuant to §§ 21.902(b)(3) through (b)(5), 21.938(b)(1) and (2) and (c), and 74.903 of this chapter, and to protection of the response station hub pursuant to the preceding paragraph. Unless the application for the response station hub license specifies that the same frequencies also will be employed for digital and/or analog point-to-multipoint transmissions by MDS stations and/or MDS booster stations, upon the filing of a certification of completion of construction of an MDS response station hub where the channels of an MDS station are being utilized as response station transmit frequencies, the MDS station whose channels are being utilized for response station transmissions shall no longer be entitled to interference protection pursuant to §§ 21.902(b)(3) through (b)(5), 21.938(b)(1) and (2) and (c), and 74.903 of this chapter within the response service area with regard to any portion of any 6 MHz channel employed solely for response station communications. Upon the certification of completion of construction of an MDS response station hub where the channels of an MDS station are being utilized for response station transmissions and the application for the response station hub license specifies that the same frequencies will be employed for point-to-multipoint transmissions, the MDS station whose channels are being utilized shall be entitled both to interference protection pursuant to §§ 21.902(b)(3) through (b)(5), 21.938(b)(1) and (2) and (c), and 74.903 of this chapter, and to protection of the response station hub pursuant to the preceding provisions of this paragraph.

(j) 125 kHz wide response channels shall be subject to the following requirements: The 125 kHz wide channel shall be centered at the assigned frequency. If amplitude modulation is used, the carrier shall not be modulated in excess of 100%. If frequency modulation is used, the deviation shall not exceed ±25 kHz. Any emissions outside the channel shall be attenuated at the channel edges at least 35 dB below peak output power when analog modulation is employed or 35 dB below licensed average output power when digital modulation is employed (or, when subchannels are used, the appropriately adjusted value based upon the ratio of the channel-to-subchannel bandwidths). Any emissions more than 125 kHz from either channel edge, including harmonics, shall be attenuated at least 60 dB below peak output power when analog modulation is employed, or at least 60 dB below licensed average output power when digital modulation is employed (or, when subchannels are used, the appropriately adjusted value based upon the ratio of the channel-to-subchannel bandwidths). Notwithstanding the foregoing, in situations where adjacent channel licensees jointly transmit over more than one contiguous channel utilizing digital modulation, the maximum out-of-band power shall be attenuated at the edges of those combined channels at least 35 dB

relative to the licensed average power level of each channel. Emissions more than 125 kHz from either edge of the combined channels, including harmonics, shall be attenuated at least 60 dB below peak analog power or average digital power of each channel, as appropriate.

(k) A response station may be operated unattended. The overall performance of the response station transmitter shall be checked by the hub licensee as often as necessary to ensure that it is functioning in accordance with the requirements of the Commission's rules. The licensee of a response station hub is responsible for the proper operation of all associated response station transmitters. Each response station hub licensee is responsible for maintaining, and making available to the Commission upon request, a list containing all customer names and addresses, plus the technical parameters (EIRP, emission, bandwidth, antenna pattern/ height/ orientation/ polarization) pertinent to each class of response station within the response service area.

(l) The transmitting apparatus employed at MDS response stations shall have received type certification.

(m) An MDS response station shall be operated only when engaged in communications with its associated MDS response station hub or MDS station or booster station, or for necessary equipment or system tests and adjustments. Upon initial installation, and upon relocation and reinstallation, a response station transmitter shall be incapable of emitting radiation unless, and until, it has been activated by reception of a signal from the associated MDS station or booster station. A hub station licensee shall be capable of remotely deactivating any and all response station transmitters within its RSA by means of signals from the associated MDS station or booster station. Radiation of an unmodulated carrier and other unnecessary transmissions are forbidden.

(n) All response stations utilizing an EIRP greater than 18 dBW shall be installed by the associated hub licensee or by the licensee's employees or agents. For the purposes of this section, all EIRP dBW values assume the use of a 6 MHz channel. For channel bandwidths other than 6 MHz, the EIRP dBW values should be adjusted up (channel >6 MHz) or down (channel <6 MHz) by 10 log(X/6) dBW, where X is the channel width in MHz. For response stations located within 1960 feet of an ITFS receive site registered and built prior to the filing of the application for the hub station license, the hub licensee must notify the licensee of the ITFS receive site at least one business day prior to the activation of these response stations. The notification must contain, for each response station to be activated, the following information: name and telephone number of a contact person who will be responsible for coordinating the resolution of any interference problems; street address; geographic coordinates to the nearest second; channels/subchannels (transmit only); and transmit antenna pattern, EIRP, orientation and height AMSL. (If transmit antenna pattern, EIRP, orientation or height AMSL are not known with specificity at the time of notification, the hub licensee may, instead, specify the worst-case values for the class of response station being activated.) Such notice to the ITFS licensee shall be given in writing by certified mail unless the ITFS licensee has requested delivery by email or facsimile. The ITFS licensee may waive the notification requirement on a site-specific basis or on a system-wide basis. The notification provisions of this section shall not apply if:

(1) The response station will operate at an EIRP no greater than −6 dBW; or

(2) The response station will operate at an EIRP greater than −6 dBW and no more than 18 dBW and:

(i) The channels being received at the ITFS site are neither the same as, nor directly adjacent to, the channel(s) to be transmitted from the response station; and

(ii) The hub station licensee has replaced, at its expense, the frequency downconverters used at all ITFS receive sites registered and constructed prior to the filing of the hub station application which are within 1960 feet of the hub station's response service area; and

(iii) The downconverters, at a minimum, conform to the following specifications:

(A) A frequency of operation covering the 2150–2162 MHz band or the 2500–2686 MHz band; and

(B) A third-order intercept point of 30 dBm; and

(C) A conversion gain of 32 dB, or the same conversion gain as the existing ITFS downconverter, whichever is least; and

(D) A noise figure of no greater than 2.5 dB, or no more than 1 dB greater than the noise figure of the existing ITFS downconverter, whichever is greater; and

(iv) The proposal to upgrade the ITFS downconverter was made in writing and served upon the affected ITFS licensee, conditional licensee or applicant at the same time the application for the response station hub license was served on cochannel and adjacent channel ITFS parties and no objection was made within the 60-day period allowed for petitions to deny the hub station application.

(o) Interference calculations shall be performed in accordance with Appendix D (as amended) to the *Report and Order* in MM Docket 97–217, FCC 98–231, ''Methods For Predicting Interference From Response Station Transmitters and To Response Station Hubs and For Supplying Data on Response Station Systems.'' (Note: This document is subject to change and will be updated/amended as needed without prior notification. Applicants should always utilize the most current version of the document, as found at the Commission's internet web site, http://www.fcc.gov/mmb/vsd/files/methodology.doc). Compliance with out-of-band emission limitations shall be established in accordance with §21.908(e).

[63 FR 65105, Nov. 25, 1998; 64 FR 4054, Jan. 27, 1999, as amended at 64 FR 63733, Nov. 22, 1999; 65 FR 46618, July 31, 2000]

§21.910 Special procedures for discontinuance, reduction or impairment of service by common carrier licensees.

(a) Any licensee who has elected common carrier status and who seeks to discontinue service on a common carrier basis and instead provide service on a non-common carrier basis, or who otherwise intends to reduce or impair service the carrier shall notify all affected customers of the planned discontinuance, reduction or impairment on or before the date that the licensee provides notice to the Commission pursuant to §21.903(d).

(b) Notice shall be in writing to each affected customer unless the Commission authorizes in advance, for good cause shown, another form of notice. Notice shall include the following:

(1) Name and address of carrier; and

(2) Date of planned service discontinuance, reduction or impairment; and

(3) Points or geographic areas of service affected; and

(4) How many and which channels are affected.

[64 FR 63735, Nov. 22, 1999]

§21.911 Annual reports.

(a) No later than March 1 of each year for the preceding calendar year, each licensee in the Multipoint Distribution Service shall file with the Commission two copies of a report which must include the following:

(1) Name and address of licensee;

(2) Station(s) call letters and primary geographic service area(s);

(3) The following statistical information, preferably in tabular form, for the licensee's station (and each channel thereof);

(i) The total number of separate subscribers served during the calendar year;

(ii) The total hours of transmission service rendered during the calendar year to all subscribers;

(iii) The total hours of transmission service rendered during the calendar year in the following categories: entertainment, education and training, public service, data transmission, and other services;

(iv) A list of each period of time during the calendar year in which a station was not operational due to removal or alteration of equipment or facilities; and

(v) A list of each period of time during the calendar year in which the station rendered no service as authorized, if the time period was a consecutive period longer than 48 hours.

(b) The licensee, by an appropriate corporate officer, controlling partner, or individual proprietor, must certify this report as to the accuracy and completeness of the information contained therein.

(c) A copy of each year's report shall be retained in the principal office of the licensee and shall be readily available to the public for reference and inspection.

[55 FR 46011, Oct. 31, 1990]

§ 21.912 Cable television company eligibility requirements and MDS/cable cross-ownership.

(a) Nothwithstanding the provisions of § 21.900 of this part, initial or modified authorizations for stations in the 2150-2162 MHz and 2596–2680 MHz frequency bands may not be granted to a cable operator if a portion of the Multipoint Distribution Service (MDS) station's protected services area is within the portion of the franchise area actually served by the cable operator's cable system. No cable operator may acquire such authorization either directly, or indirectly through an affiliate owned operated, or controlled by or under common control with a cable operator.

(b) No licensee of a station in this service may lease transmission time or capacity to a cable operator either directly, or indirectly through an affiliate owned, operated, controlled by, or under common control with a cable operator, if a portion of the Multipoint Distribution Service (MDS) station's protected services area is within the portion of the franchise area actually served by the cable operator's cable system.

(c) Applications for new stations, station modifications, assignments or transfers of control by cable operators of stations in the 2150–2162 MHz and 2596–2680 MHz frequency bands shall include a showing that no portion of the protected service area of the MDS station is within the portion of the franchise area actually served by the cable operator's cable system, or of any entity indirectly affiliated, owned, operated, controlled by, or under common control with the cable operator.

NOTE 1: In applying the provisions of this section, ownership and other interests in MDS licensees or cable television systems will be attributed to their holders and deemed cognizable pursuant to the following criteria:

(a) Except as otherwise provided herein, partnership and direct ownership interests and any voting stock interest amounting to 5% or more of the outstanding voting stock of a corporate MDS licensee or cable television system will be cognizable;

(b) No minority voting stock interest will be cognizable if there is a single holder of more than 50% of the outstanding voting stock of the corporate MDS licensee or cable television system in which the minority interest is held;

(c) Investment companies, as defined in 15 U.S.C. 80a–3, insurance companies and banks holding stock through their trust departments in trust accounts will be considered to have a cognizable interest only if they hold 20% or more of the outstanding voting stock of a corporate MDS licensee or cable television system, or if any of the officers or directors of the MDS licensee or cable television system are representatives of the investment company, insurance company or bank concerned. Holdings by a bank or insurance company will be aggregated if the bank or insurance company has any right to determine how the stock will be voted. Holdings by investment companies will be aggregated if under common management.

(d) Attribution of ownership interests in an MDS licensee or cable television system that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain exceeds 50%, it shall not be included for purposes of this multiplication. [For example, if A owns 10% of company X, which owns 60% of company Y, which owns 25% of ''Licensee,'' then X's interest in ''Licensee'' would be 25% (the same as Y's interest since X's interest in Y exceeds 50%), and A's interest in ''Licensee'' would be 2.5% (0.1 x 0.25). Under the 5% attribution benchmark, X's interest in ''Licensee'' would be cognizable, while A's interest would not be cognizable.]

(e) Voting stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary, the grantor or beneficiary, as appropriate, will be attributed with the stock interests held in

trust. An otherwise qualified trust will be ineffective to insulate the grantor or beneficiary from attribution with the trust's assets unless all voting stock interests held by the grantor or beneficiary in the relevant MDS licensee or cable television system are subject to said trust.

(f) Subject to paragraph (j) of this Note, holders of non-voting stock shall not be attributed an interest in the issuing entity. Subject to paragraph (j) of this Note, holders of debt and instruments such as warrants, convertible debentures, options or other nonvoting interests with rights of conversion to voting interests shall not be attributed unless and until conversion is effected.

(g)(1) A limited partnership interest shall be attributed to a limited partner unless that partner is not materially involved, directly or indirectly, in the management or operation of the MDS or cable television activities of the partnership and the licensee or system so certifies. An interest in a Limited Liability Company (''LLC'') or Registered Limited Liability Partnership (''RLLP'') shall be attributed to the interest holder unless that interest holder is not materially involved, directly or indirectly, in the management or operation of the MDS or cable television activities of the partnership and the licensee or system so certifies.

(2) In order for a licensee or system that is a limited partnership to make the certification set forth in paragraph (g)(1) of this NOTE, it must verify that the partnership agreement or certificate of limited partnership, with respect to the particular limited partner exempt from attribution, establishes that the exempt limited partner has no material involvement, directly or indirectly, in the management or operation of the MDS or cable television activities of the partnership. In order for a licensee or system that is an LLC or RLLP to make the certification set forth in paragraph (g)(2) of this NOTE, it must verify that the organizational document, with respect to the particular interest holder exempt from attribution, establishes that the exempt interest holder has no material involvement, directly or indirectly, in the management or operation of the MDS or cable television activities of the LLC or RLLP. The criteria which would assume adequate insulation for purposes of this certification are described in the Memorandum Opinion and Order in MM Docket No. 83–46, 50 FR 27438, July 3, 1985, as modified on reconsideration in the Memorandum Opinion and Order in MM Docket No. 83–46, 52 FR 1630, January 15, 1987. Irrespective of the terms of the certificate of limited partnership or partnership agreement, or other organizational document in the case of an LLC or RLLP, however, no such certification shall be made if the individual or entity making the certification has actual knowledge of any material involvement of the limited partners, or other interest holders in the case of an LLC or RLLP, in the management or operation of the MDS or cable television businesses of the partnership or LLC or RLLP.

(3) In the case of an LLC or RLLP, the licensee or system seeking installation shall certify, in addition, that the relevant state statute authorizing LLCs permits an LLC member to insulate itself as required by our criteria.

(h) Officers and directors of an MDS licensee or cable television system are considered to have a cognizable interest in the entity with which they are so associated. If any such entity engages in businesses in addition to its primary business of MDS or cable television service, it may request the Commission to waive attribution for any officer or director whose duties and responsibilities are wholly unrelated to its primary business. The officers and directors of a parent company of an MDS licensee or cable television system, with an attributable interest in any such subsidiary entity, shall be deemed to have a cognizable interest in the subsidiary unless the duties and responsibilities of the officer or director involved are wholly unrelated to the MDS licensee or cable television system subsidiary, and a statement properly documenting this fact is submitted to the Commission. [This statement may be included on the Licensee Qualification Report.] The officers and directors of a sister corporation of an MDS licensee or cable television system shall not be attributed with ownership of these entities by virtue of such status.

(i) Discrete ownership interests will be aggregated in determining whether or not an interest is cognizable under this section. An individual or entity will be deemed to have a cognizable investment if:

(1) The sum of the interests held by or through ''passive investors'' is equal to or exceeds 20 percent; or

(2) The sum of the interests other than those held by or through ''passive investors'' is equal to or exceeds 5 percent; or

(3) The sum of the interests computed under paragraph (i)(1) of this NOTE plus the sum of the interests computed under paragraph (i)(2) of this NOTE is equal to or exceeds 20 percent.

(j) Notwithstanding paragraphs (b), (f), and (g) of this NOTE, the holder of an equity or debt interest or interests in an MDS licensee or cable television system subject to the MDS/cable cross-ownership rule (''interest holder'') shall have that interest attributed if:

(1) the equity (including all stockholdings, whether voting or nonvoting, common or preferred) and debt interest or interests, in the aggregate, exceed 33 percent of the total asset value (all equity plus all debt) of that MDS licensee or cable television system; and

(2) the interest holder also holds an interest in an MDS licensee or cable television system that is attributable under paragraphs of this NOTE other than this paragraph (j) and which operates in any portion of the franchise area served by that cable operator's cable system.

(k) The term ''area served by a cable system'' means any area actually passed by the cable operator's cable system and which can be connected for a standard connection fee.

(l) As used in this section ''cable operator'' shall have the same definition as in §76.5 of this chapter.

NOTE 2: The Commission will entertain requests to waive the restrictions in paragraph (a) of this section where necessary to ensure that all significant portions of the franchise area are able to obtain multichannel video service. Such waiver requests should be filed in accordance with special relief procedures set forth in §76.7.

(d) The provisions of paragraphs (a) through (c) of this section will not apply to one MDS or MMDS channel used to provide locally-produced programming to cable headends. Locally-produced programming is programming produced in or near the cable operator's franchise area and not broadcast on a television station available within that franchise area. A cable operator will be permitted one MDS channel in an MMDS protected service area for this purpose, and no more than one MDS channel in an MMDS protected service area may be used by a cable television company or its affiliate or lessor pursuant to this paragraph. The licensee for a cable operator providing local programming pursuant to a lease must include in a notice filed with the Common Carrier Bureau a cover letter explicitly identifying itself or its lessee as a local cable operator and stating that the lease was executed to facilitate the provision of local programming. The first application or the first lease notification in an area filed with the Commission will be entitled to the exemption. The limitations on one MDS channel per party and per area include any cable/MDS operations grandfathered pursuant to paragraph (f) of this section or cable/ITFS operations grandfathered pursuant to §74.931(e) of this chapter.[1] The cable operator must demonstrate in its MDS/MMDS application that the proposed local programming will be provided within one year from the date its application is granted. Local programming service pursuant to a lease must be provided within one year of the date of the lease or one year of grant of the licensee's application for the leased channel, whichever is later. If an MDS license for these purposes is granted and the programming is subsequently discontinued, the license will be automatically forfeited the day after local programming service is discontinued.

(e) Applications filed by cable television companies, or affiliates, for MDS channels prior to February 8, 1990, will not be subject to the prohibitions of this section. Applications filed on February 8, 1990, or thereafter will be returned. Lease arrangements between cable and MDS entities for which a lease or a firm agreement was signed prior to February 8, 1990, will also not be subject to the prohibitions of this section. Leases between cable television companies, or affiliates, and MDS/MMDS station licensees, conditional licensees, or applicansts executed on February 8, 1990, or thereafter, are invalid.

(1) Applications filed by cable operators, or affiliates, for MMDS channels prior to February 8, 1990, will not be subject to the prohibitions of this section. Except as provided in paragraph (e)(2) below, applications filed on February 8, 1990, or thereafter will be returned. Lease arrangements between cable and MDS entities for which a lease or a firm agreement was signed prior to February 8, 1990, will also not be subject to the prohibitions of this section. Except as provided in paragraph (e)(2) below, leases between cable operators, or affiliates, and MDS/MMDS station licensees, conditional licensees, or applicants executed on or before February 8, 1990, or thereafter are invalid.

(2) Applications filed by cable operators, or affiliates for MDS channels after February 8, 1990, and prior to October 5, 1992, will not be subject to the prohibition of this section, if, pursuant to the then existing overbuild or rural exceptions, the applications were allowed under the then existing cable/MMDs cross-ownership prohibitions. Lease arrangements between cable operators and MDS entities for which a lease or firm agreement was signed

after February 8, 1990, and prior to October 5, 1992, will not be subject to the prohibitions of this section, if, pursuant to the then existing rural and overbuild exceptions, the lease arrangements were allowed.

(3) The limitations on cable television ownership in this section do not apply to any cable operator in any franchise area in which a cable operator is subject to effective competition as determined under section 623(l) of the Communications Act.

(f) Interested persons may file a petition to deny an application filed pursuant to paragraph (d) of this section within 30 days after the Commission gives public notice that the application or petition has been filed. Petitions must be served upon the applicant, and must contain a complete and detailed showing, supported by affidavit, of any facts or considerations relied upon. The applicant may file an opposition to the petition to deny within 30 days after the filing of the petition, and must serve copies upon all persons who have filed petitions to deny. The Commission, after consideration of the pleadings, will determine whether the public interest, convenience and necessity would be served by the grant or denial of the application, in whole or in part. The Commission may specify other procedures, such as oral argument, evidentiary hearing or further written submission directed to particular aspects, as it deems appropriate.

NOTES: In these grandfathered situations, we will consider granting waivers to permit the use of a second MDS channel for the delivery of locally produced programming. Because allocating a second channel to this use would further reduce the channel capacity available for wireless cable service, we will require an applicant for the second channel to demonstrate, at a minimum, that it is ready and able to provide additional locally produced programming to area cable systems, and that no other practical means of delivering the programming are available to it. In considering requests for waiver, we will also take into account the competitive environment for the production and delivery of locally produced programming in the relevant markets.

[55 FR 46011, Oct. 31, 1990, as amended at 56 FR 57818, Nov. 14, 1991; 58 FR 42018, Aug. 6, 1993; 58 FR 45064, Aug. 26, 1993; 61 FR 15387, Apr. 8, 1996; 64 FR 50644, Sept. 17, 1999]

§ 21.913 Signal booster stations.

(a) An MDS booster station may reuse channels to repeat the signals of MDS stations or to originate signals on MDS channels. The aggregate power flux density generated by an MDS station and all associated signal booster stations and all simultaneously operating cochannel response stations may not exceed -73 dBW/m^2 (or the appropriately adjusted value based on the actual bandwidth used if other than 6 MHz, see § 21.902(b)(7)(i)) at or beyond the boundary of the protected service area, as defined in §§ 21.902(d) and 21.933, of the main MDS station whose channels are being reused, as measured at locations for which there is an unobstructed signal path, unless the consent of the affected cochannel licensee is obtained.

(b) A licensee or conditional licensee of an MDS station, or the capacity lessee of such MDS station upon the written consent of the licensee or conditional licensee, may secure a license for a high power signal booster station that has a maximum EIRP in excess of -9 dBW + 10 log(X/6) dBW where X is the channel width in MHz, if it complies with the out-of-band emission requirements of § 21.908. Any licensee of a high-power booster station that is a capacity lessee shall, upon termination or expiration of the capacity lease, automatically assign the booster station license to the licensee or conditional licensee of the MDS station by and upon written notice to the Commission signed by the lessee and such licensee or conditional licensee. If upon termination or expiration of the capacity lease the licensee or conditional licensee no longer desires or needs the high-power booster station license, such a license must be returned to the Commission. The applicant for a high-power station, or for modification thereto, where not subject to § 21.41 or § 21.42, shall file FCC Form 331 with Mellon Bank, and certify on that form that the applicant has complied with

the additional requirements of this paragraph (b), and that the interference data submitted under this paragraph is complete and accurate. Failure to certify compliance and to comply completely with the following requirements of this paragraph (b) shall result in dismissal of the application or revocation of the high-power MDS signal booster station license, and may result in imposition of a monetary forfeiture. The applicant is additionally required to submit (see §21.902(m) for permissible format(s) and media) to the Commission's Reference Room the following information:

(1) A demonstration that the proposed signal booster station site is within the protected service area, as defined in §§21.902(d) and 21.933, of the MDS station whose channels are to be reused; and

(2) A study which demonstrates that the aggregate power flux density of the MDS station and all associated booster stations and simultaneously operating cochannel response stations licensed to or applied for by the applicant, measured at or beyond the boundary of the protected service area of the MDS station whose channels are to be reused, does not exceed -73 dBW/m^2 (or the appropriately adjusted value based on the actual bandwidth used if other than 6 MHz, see §21.902(b)(7)(i)) at locations for which there is an unobstructed signal path, unless the consent of the affected licensees has been obtained; and

(3) In lieu of the requirements of §21.902(c) and (i), a study which demonstrates that the proposed booster station will cause no harmful interference (as defined in §21.902(f)) to cochannel and adjacent channel, authorized or previously-proposed ITFS and MDS stations with protected service area center coordinates as specified in §21.902(d), to any authorized or previously-proposed response station hubs, booster stations or I channel stations associated with such ITFS and MDS stations, or to any ITFS receive sites registered as of September 17, 1998, within 160.94 kilometers (100 miles) of the proposed booster station's transmitter site. Such study shall consider the undesired signal levels generated by the proposed signal booster station, the main station, all other licensed or previously-proposed associated booster stations, and all simultaneously operating cochannel response stations licensed to or applied for by the applicant. In the alternative, a statement from the affected MDS or ITFS licensee or conditional licensee stating that it does not object to operation of the high-power MDS signal booster station may be submitted; and

(4) A description of the booster service area; and

(5) A demonstration either

(i) That the booster service area is entirely within the protected service area to which the licensee of a station whose channels are being reused is entitled by virtue of its being the licensee of an incumbent MDS station, or by virtue of its holding a Basic Trading Area or Partitioned Service Area authorization; or

(ii) That the licensee entitled to any cochannel protected service area which is overlapped by the proposed booster service area has consented to such overlap; and

(6) A demonstration that the proposed booster service area can be served by the proposed booster without interference; and

(7) A certification that copies of the materials set forth in paragraph (b) of this section have been served upon the licensee or conditional licensee of each station (including each response station hub and booster station) required to be studied pursuant to paragraph (b)(3) of this section, and upon any affected holder of a Basic Trading Area or Partitioned Service Area authorization pursuant to paragraph (b)(2) of this section.

(8) If the applicant is a capacity lessee, a certification that:

(i) The licensee or conditional licensee has provided its written consent to permit the capacity lessee to apply for the booster station license; and

(ii) The applicant and the licensee or conditional licensee have entered into a lease that is in effect at the time of such filing.

(c) Except as provided in §21.27(d), applications for high-power MDS signal booster station licenses may be filed at any time. Notwithstanding any other provision of part 21 (including §21.31), applications for high-power MDS signal

booster station licenses meeting the requirements of paragraph (b) of this section shall cut-off applications that are filed on a subsequent day for facilities that would cause harmful electromagnetic interference to the proposed booster stations.

(d) Notwithstanding the provisions of §21.30(a)(4) and except as provided in §21.27(d), any petition to deny an application for a high-power MDS signal booster station license shall be filed no later than the sixtieth (60th) day after the date of public notice announcing the filing of such application or major amendment thereto. Notwithstanding §21.31 and except as provided in §21.27(d), an application for a high-power MDS signal booster station license that meets the requirements of paragraph (b) of this section shall be granted on the sixty-first (61st) day after the Commission shall have given public notice of the acceptance for filing of it, or of a major amendment to it if such major amendment has been filed, unless prior to such date either a party in interest timely files a formal petition to deny or for other relief pursuant to §21.30(a), or the Commission notifies the applicant that its application will not be granted. Where an application is granted pursuant to the provisions of this paragraph, the conditional licensee or licensee shall maintain a copy of the application at the MDS booster station until such time as the Commission issues a high-power MDS signal booster station license.

(e) A licensee or conditional licensee of an MDS station, or the capacity licensee of such MDS station upon the written consent of the licensee or conditional licensee, shall be eligible to install and operate a low power signal booster station that has a maximum EIRP of −9 dBW + log10(X/6) dBW, where X is the channel width in MHz. A low-power MDS signal booster station may operate only on one or more MDS channels that are licensed to the licensee of the MDS booster station, but may be operated by a third party with a fully-executed lease or consent agreement with the MDS conditional licensee or licensee. Any licensee of a low-power booster station that is a capacity lessee shall, upon termination or expiration of the capacity lease, automatically assign the booster station license to the licensee or conditional licensee of the MDS station by and upon written notice to the Commission signed by the lessee and such licensee or conditional licensee. If upon termination or expiration of the capacity lease the licensee or conditional licensee no longer desires or needs the low-power booster station license, such a license must be returned to the Commission. An MDS licensee, conditional licensee, or capacity lessee thereof, may install and commence operation of a low-power MDS signal booster station for the purpose of retransmitting the signals of the MDS station or for originating signals. Such installation and operation shall be subject to the condition that for sixty (60) days after installation and commencement of operation, no objection or petition to deny is filed by the licensee of a, or applicant for a previously-proposed, cochannel or adjacent channel ITFS or MDS station with a transmitter within 8.0 kilometers (5 miles) of the coordinates of the low-power MDS signal booster station. An MDS licensee, conditional licensee, or capacity lessee thereof seeking to install a low-power MDS signal booster station under this rule must submit a FCC Form 331 to the Commission within 48 hours after installation. In addition, the MDS licensee, conditional licensee, or capacity lessee must submit the following information (see §21.902(m) for permissible format(s) and media) to the Commission's Reference Room:

(1) A description of the booster service area; and

(2) A demonstration either

(i) That the booster service area is entirely within the protected service area to which each licensee of a station whose channels are being reused is entitled by virtue of its being the licensee of an incumbent MDS station, or by virtue of its holding a Basic Trading Area or Partitioned Service Area authorization; or

(ii) That the licensee entitled to any cochannel protected service area which is overlapped by the proposed booster service area has consented to such overlap; and

(3) A demonstration that the proposed booster service area can be

served by the proposed booster without interference; and

(4) A certification that:

(i) The maximum power level of the signal booster transmitter does not exceed −9 dBW + 10 log(X/6) dBW, where X is the channel width in MHz; and

(ii) Where the booster is operating on channel D4, E1, F1, E2, F2, E3, F3, E4, F4 and/or G1, no registered receiver of an ITFS E or F channel station, constructed prior to May 26, 1983, is located within a 1.61 km (1 mile) radius of the coordinates of the booster, or in the alternative, that a consent statement has been obtained from the affected ITFS licensee; and

(iii) The applicant has complied with §1.1307 of this chapter; and

(iv) Each MDS and/or ITFS station licensee (including the licensees of booster stations and response station hubs) with protected service areas and/or registered receivers within a 8 km (5 mile) radius of the coordinates of the booster has been given notice of its installation; and

(v) The signal booster site is within the protected service area of the MDS station whose channels are to be reused; and

(vi) The aggregate power flux density of the MDS station and all associated booster stations and simultaneously operating cochannel response stations licensed to or applied for by the applicant, measured at or beyond the boundary of the protected service areas of the MDS stations whose channels are to be reused, does not exceed −73 dBW/m^2 (or the appropriately adjusted value based on the actual bandwidth used if other than 6 MHz, see §21.902(b)(7)(i)) at locations for which there is an unobstructed signal path, unless the consent of the affected licensees has been obtained; and

(vii) The antenna structure will extend less than 6.10 meters (20 feet) above the ground or natural formation or less than 6.10 meters (20 feet) above an existing manmade structure (other than an antenna structure); and

(viii) The applicant understands and agrees that, in the event harmful interference is claimed by the filing of an objection or petition to deny, it must terminate operation within two (2) hours of notification by the Commission, and must not recommence operation until receipt of written authorization to do so by the Commission; and

(ix) If the applicant is a capacity lessee, a certification that:

(A) The licensee or conditional licensee has provided its written consent to permit the capacity lessee to apply for the booster station license; and

(B) The applicant and the licensee or conditional licensee have entered into a lease that is in effect at the time of such filing.

(f) Commencing upon the filing of an application for a high-power MDS signal booster station license and until such time as the application is dismissed or denied or, if the application is granted, a certification of completion of construction is filed, an applicant for any new or modified MDS or ITFS station (including a response station hub, high-power booster station, or I Channels station) shall demonstrate compliance with the interference protection requirements set forth in §§21.902 (b)(3) through (b)(5), 21.938 (b) (1) and (2) and (c), or 74.903 of this chapter with respect to any previously-proposed or authorized booster service area both using the transmission parameters of the high-power MDS signal booster station (e.g., EIRP, polarization(s) and antenna height) and the transmission parameters of the MDS station whose channels are to be reused by the high-power MDS signal booster station. Upon the filing of a certification of completion of construction of an MDS booster station applied for pursuant to paragraph (b) of this section, or upon the submission of an MDS booster station notification pursuant to paragraph (e) of this section, the MDS station whose channels are being reused by the MDS signal booster shall no longer be entitled to interference protection pursuant to §§21.902 (b)(3) through (b)(5), 21.938 (b) (1) and (2) and (c), and 74.903 of this chapter within the booster service area based on the transmission parameters of the MDS station whose channels are being reused. A booster station shall not be entitled to protection from interference caused by facilities proposed on or prior to the day the application or notification for the booster station is

filed. A booster station shall not be required to protect from interference facilities proposed on or after the day the application or notification for the booster station is filed.

(g) Where an application is granted under paragraph (d) of this section, if a facility operated pursuant to that grant causes harmful, unauthorized interference to any cochannel or adjacent channel facility, it must promptly remedy the interference or immediately cease operations of the interfering facility, regardless of whether any petitions to deny or for other relief were filed against the application during the application process. The burden of proving that a high-power MDS signal booster station is not causing harmful, unauthorized interference lies on the licensee of the alleged interfering facility, following the filing of a documented complaint of interference by an affected party.

(h) In the event any MDS or ITFS receive site suffers interference due to block downconverter overload, the licensee of each non-co/adjacent channel signal booster station within five miles of such receive site shall cooperate in good faith to expeditiously identify the source of the interference. Each licensee of a signal booster station contributing to such interference shall bear the joint and several obligation to remedy promptly all interference resulting from block downconverter overload at any ITFS registered receive site or at any receive site within an MDS or ITFS protected service area applied for prior to the submission of the application or notification for the signal booster station, regardless of whether the receive site suffering the interference was constructed prior to or after the construction of the signal booster station(s) causing the downconverter overload; provided, however, that the licensee of the registered ITFS receive site or the MDS or ITFS protected service area must cooperate fully and in good faith with efforts by signal booster station licensees to prevent interference before constructing the signal booster station and/or to remedy interference that may occur. In the event that more than one signal booster station licensee contributes to block downconverter interference at an MDS or ITFS receive site, such licensees shall cooperate in good faith to remedy promptly the interference.

[63 FR 65109, Nov. 25, 1998; 64 FR 4054, Jan. 27, 1999, as amended at 64 FR 63736, Nov. 22, 1999; 65 FR 46619, July 31, 2000]

EFFECTIVE DATE NOTE: At 65 FR 46619, July 31, 2000, §24.913 was amended by revising paragraphs (b) introductory text, (b)(8), and (e)(4)(ix). These paragraphs contain information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 21.914 Mutually-exclusive MDS applications.

Notwithstanding the provisions of §21.31 (b)(2)(i) and (ii) of this part, to be entitled to be included in a random selection process or to comparative consideration with one or more conflicting applications, an application for frequencies at 2150–2162 MHz, 2596–2644 MHz, 2650–2656 MHz, 2662–2668 MHz, or 2674–2680 MHz must be received by the Commission in a condition acceptable for filing on the same calendar day as the first of the conflicting applications is received by the Commission in a condition acceptable for filing.

[55 FR 46012, Oct. 31, 1990, as amended at 56 FR 57819, Nov. 14, 1991]

§ 21.915 One-to-a-market requirement.

Each applicant may file only a single Multipoint Distribution Service application for the same channel or channel group in each area. The stockholders, partners, owners, trustees, beneficiaries, officers, directors, or any other person or entity holding, directly or indirectly, any interest in one applicant or application for an area and channel or channel group, must not have any interest, directly or indirectly, in another applicant or application for that same area and channel or channel group.

[58 FR 11799, Mar. 1, 1993]

§ 21.920 Applicability of cable television EEO requirements to MDS and MMDS facilities.

Notwithstanding other EEO provisions within §1.815 of this chapter and §21.307, an entity that uses an owned or

leased MDS, MMDS and/or ITFS facility to provide more than one channel of video programming directly to the public must comply with the equal employment opportunity requirements set forth in part 76, subparts E and U of this chapter, if such entity exercises control (as defined in part 76, subparts E and U of this chapter) over the video programming it distributes.

[58 FR 42249, Aug. 9, 1993, as amended at 65 FR 53614, Sept. 5, 2000]

EFFECTIVE DATE NOTE: At 65 FR 53614, Sept. 5, 2000 §21.920 was amended by removing the phrase ''part 76, subpart E'' each place it appeared and adding in its place the phrase ''part 76, subparts E and U'', effective Oct. 5, 2000.

§ 21.921 Basis and purpose for electronic filing and competitive bidding process.

(a) Basis. The rules for competitive biding procedures for the Multipoint Distribution Service (MDS) in this part are promulgated under the provisions of the Communications Act of 1934, as amended, which vests authority in the Federal Communications Commission to regulate radio transmission and to issue licenses for radio stations, and §309(j) of the Act, which vests authority in the Commission to conduct competitive bidding.

(b) Purpose. This part states the conditions under which portions of the radio spectrum are made available and licensed for Multipoint Distribution Service via the competitive bidding procedures.

(c) Scope. The rules in this part apply only to authorizations and station licenses granted under the competitive bidding procedures of this section. This subpart contains some of the procedures and requirements for the issuance of authorizations to construct and operate multipoint distribution services. One also should consult part 1, subpart Q of the Commission's rules, §§21.1 through 21.406 and 21.900 through 21.920 of this part, and other Commission rules of importance with respect to the licensing and operation of MDS stations.

[60 FR 36554, July 17, 1995]

§ 21.922 Authorized frequencies.

The frequencies in the MDS service through the competitive bidding process are in the frequency allocations table of §21.901 of this part.

[60 FR 36555, July 17, 1995]

§ 21.923 Eligibility.

Any individual or entity, other than those precluded by §§21.4 and 21.912 of this part, is eligible to receive a Basic Trading Area (BTA) authorization and a station license for each individual MDS station within the BTA. There is no restriction on the number of BTA authorizations or MDS station licenses, including multiple cochannel station licenses, sought by or awarded to a qualified individual or entity.

[60 FR 36555, July 17, 1995]

§ 21.924 Service areas.

(a) MDS service areas are regional Basic Trading Areas (BTAs) which are based on the Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Edition, at pages 38–39. The BTA Map is available for public inspection at the Reference Information Center, Consumer Information Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

(b) The following additions will be available for licensing separately as BTA-like areas: American Samoa; Guam; Northern Mariana Islands; San Juan, Puerto Rico; Mayaguez/Aguadilla-Ponce, Puerto Rico; and the United States Virgin Islands.

(c) The area within the boundaries of a BTA to which a BTA authorization holder may provide Multipoint Distribution Service excludes the protected service areas of any incumbent MDS stations and previously proposed and authorized ITFS facilities, including registered receive sites.

[60 FR 36555, July 17, 1995, as amended at 60 FR 57367, Nov. 15, 1995; 64 FR 60726, Nov. 8, 1999]

§ 21.925 Applications for BTA authorizations and MDS station licenses.

(a)(1) An applicant must file a short-form application and, when necessary, the short-form application supplement,

identifying each BTA service authorization sought.

(2) For purposes of conducting competitive bidding procedures, short-form applications are considered to be mutually exclusive with each other if they were filed for, and specified, the same BTA service area.

(b) Separate long-form applications must be filed for each individual MDS station license sought within the protected service area of a BTA or PSA, including:

(1) An application for each E-channel group, F-channel group, and single H, 1, and 2A channel station license sought;

(2) An application for each site where one or more MDS response station hub license(s) is/are sought, provided that the technical parameters of each MDS response station hub are the same;

(3) An application for each site where one or more MDS booster station(s) will operate with an EIRP in excess of −9 dBW (or, when subchannels or superchannels, or 125 kHz channels, are used, the appropriately adjusted value based upon the ratio of 6 MHz to the subchannel or superchannel, or 125 kHz, bandwidth);

(4) An application for authority to operate at an MDS station in the area vacated by an MDS station incumbent that has forfeited its station license; and

(5) An application for each ITFS-channel group station license sought in accordance with §§ 74.990 and 74.991 of this chapter.

(c) The Commission shall grant BTA authorizations to auction winners as set forth in § 21.958.

(d) No long-form application filed by the BTA authorization holder will be accepted prior to completion of the competitive bidding process and no long-form application will be granted until expiration of the 30-day petition to deny period following the public notice listing of the application as being accepted for filing

(e) Applicants may use the electronic filing procedures to file both the Multipoint Distribution Service short-form and long-form applications with the Commission.

[60 FR 36555, July 17, 1995, as amended at 60 FR 57367, Nov. 15, 1995; 63 FR 65112, Nov. 25, 1998]

§ 21.926 Amendments to long-form applications.

(a) A Multipoint Distribution Service long-form application may be amended as a matter of right up to the date of the public notice announcing the application has been accepted for filing provided that:

(1) The proposed amendments do not amount to more than a *pro forma* change of ownership and control;

(2) The Commission has not otherwise forbidden the amendment of pending applications.

(b) Requests to amend a long-form application placed on public notice as being accepted for filing may be granted only if a written petition demonstrating good cause is submitted and properly served on the parties of record.

[60 FR 36555, July 17, 1995]

§ 21.927 Sole bidding applicants.

Where the deadline for filing MDS short-form applications has expired and a particular BTA service area has been specified in a single short-form application only, the applicant shall be named the auction winner for that BTA authorization.

[60 FR 36555, July 17, 1995]

§ 21.928 Acceptability of short- and long-form applications.

The acceptability of short- and long-form applications will be determined according to the requirements of §§ 21.13, 21.15, 21.20, 21.21 and 21.952.

[60 FR 36555, July 17, 1995]

§ 21.929 Authorization period for station licenses.

(a)(1) A BTA authorization will be granted for a term of ten years, terminating ten years from the date of the Commission declared bidding closed in the MDS auction.

(2) A BTA authorization shall automatically terminate without further

notice to the licensee upon expiration of the ten-year license term unless prior thereto an application for renewal of such license has been filed with the Commission.

(b) Notwithstanding §21.45, each new MDS station licensed within a BTA or PSA will be granted for a term of ten years, terminating ten years from the date the Commission declared bidding closed in the MDS auction.

[60 FR 36555, July 17, 1995, as amended at 60 FR 57367, Nov. 15, 1995]

§21.930 Five-year build-out requirements.

(a)(1) A BTA authorization holder has a five-year build-out period, beginning on the date of the grant of the BTA authorization and terminating on the 5th year anniversary of the grant of the authorization, within which it may develop and expand MDS station operations within its service area.

(2) This period is not extended by the grant of subsequent authorizations (*i.e.*, grant of a station license or modification).

(3) Timely certifications of completion of construction for each MDS station within a BTA or partitioned service area must be filed upon completion of construction of a station.

(b) Each BTA authorization holder has the exclusive right to build, develop, expand and operate MDS stations within its BTA service area during the five-year build-out period. The Commission will not accept competing applications for MDS station licenses within the BTA service area during this period.

(c)(1) Within five years of the grant of a BTA authorization, the authorization holder must construct MDS stations to provide signals pursuant to §21.907 that are capable of reaching at least two-thirds of the population of the applicable service area, excluding the populations within protected service areas of incumbent stations.

(2) Sixty days prior to the end of the five-year build out period, the BTA authorization holder must file with the Commission proof that demonstrates the holder has met the requirements of §21.930(c)(1). The most recent census figures available from the U.S. Department of Commerce, Bureau of Census prior to the expiration of the authorization holder's five-year build-out period will be used to determine compliance with population-based requirements. In no event shall census figures gathered prior to 1990 be used.

(d)(1) If the Commission finds that the BTA authorization holder has demonstrated that it has met the requirements of §21.930(c)(1), the Commission will issue a declaration that the holder has met such requirements.

(2) If the Commission finds that the BTA authorization holder has not provided a signal as required in §21.930(c)(1), the Commission shall partition from the BTA any unserved area, using county lines as a guide, and shall re-authorize service to the unserved area pursuant to the MDS competitive bidding procedures of this subpart. Applications for such unserved areas are not acceptable for filing until a filing date is announced through a public notice.

(i) The competitive bidding procedures set forth in §§21.950 to 21.961 shall be followed by applicants seeking authority to provide MDS service to the unserved partitioned area.

(ii) The BTA authorization holder originally authorized to provide service is ineligible to participate in the competitive bidding process for the unserved areas partitioned from its BTA.

[60 FR 36555, July 17, 1995]

§21.931 Partitioned service areas (PSAs).

(a)(1) The holder of a BTA authorization may enter into contracts with eligible parties to partition any portion of its service area according to county boundaries, or according to other geopolitical subdivision boundaries, or multiple contiguous counties or geopolitical subdivisions within the BTA service area.

(2)(i) Partitioning contracts must be filed with the Commission within 30 days of the date that such agreements are reached.

(ii) The contracts must include descriptions of the areas being partitioned and include any documentation necessary to convey to the Commission the precise boundaries of the partitioned area.

(3) Parties to partitioning contracts must file concurrently with such contracts one of the following, where appropriate:

(i) An MDS long-form application for authority to operate a new MDS station within the PSA;

(ii) Applications for assignment or transfer of existing stations with the PSA; or

(iii) A statement of intention as defined in §21.956(a) along with a completed FCC Form 430.

(b) The eligibility requirements applicable to BTA authorization holders also apply to those individuals and entities seeking PSA authorizations.

(c) Any individual or entity acquiring the rights to a partitioned area of a BTA also acquires the rights to any previously authorized individual stations located within the partitioned area that were held by the previous authorization holder, provided that grantable applications for assignment and transfer of control, FCC Forms 702 and 704, are filed for existing stations and that acceptable amendments to pending long-form applications are filed. Pending long-form applications filed by the previous authorization holder for transmitter sites within the PSA may also be dismissed without prejudice at the applicant's request.

(d) Authorizations for PSAs will be issued in accordance with §21.958; however, when individual stations within an PSA are assigned along with the partitioned area, the authorization will be granted concurrently with the grant of the applications for assignment and transfer of the existing stations.

(e) Subsequent to issuance of the authorization for a PSA, thee partitioned area will be treated as a separate protected service area.

(f)(1) When any area within a BTA becomes a PSA, the remaining counties and other geopolitical subdivisions within that BTA will also be subsequently treated and classified as a PSA(s).

(2) At the time a BTA is partitioned, the Commission shall cancel the BTA authorization initially issued and issue a PSA authorization to the former BTA authorization holder.

(g) The duties and responsibilities imposed upon BTA authorization holders in this part and throughout the Commission's rules, such as §21.930(c)(1), apply to the holders of PSA authorizations.

(h) The build-out period for PSAs voluntarily partitioned shall be the remainder of the five-year build-out period applicable to the BTA or PSA from which the PSA was drawn. For PSA authorizations issued pursuant to §21.930(d)(2) and the competitive bidding process, the build-out period is five years, beginning on the date of the grant of the PSA authorization. The requirements of §21.930(c)(1) also apply to the holders of authorizations for PSAs.

[60 FR 36556, July 17, 1995]

§ 21.932 Forfeiture of incumbent MDS station licenses.

(a) If the license for a incumbent MDS station is forfeited, absent the filing and grant of a petition for reinstatement pursuant to §21.44(b), the 56.33 km (35 mile) protected service area of the incumbent station shall dissolve and the protected service area shall become part of the BTA or PSA surrounding it.

(b) If upon forfeiture the protected service area of a forfeited license extends across the boundaries of more than one BTA or PSA, the portions of the protected service area of the incumbent station shall merge with the overlapping BTAs or PSAs.

(c) The holder of the authorization for the BTA or PSA with which the service area of the forfeited incumbent station has merged has the exclusive right to file a long-form application to operate a station within the merged area and may modify the locations of its stations to serve the forfeited area.

[60 FR 36556, July 17, 1995]

§ 21.933 Protected service areas.

(a) The stations licensed to the holder of a BTA authorization shall have a protected service area that is coterminous with the boundaries of that BTA, subject to the exclusion of the 56.33 km (35 mile) protected service area of incumbent MDS stations and of previously proposed and authorized ITFS facilities within that BTA, even if these protected service areas extend

into adjacent BTAs. The protected service area also includes registered receive sites.

(b) The stations licensed to the holder of a PSA authorization shall have a protected service area that is coterminous with the boundaries of the counties or other geopolitical subdivisions comprising the PSA, subject to the exclusion of the 56.33 km (35 mile) protected service area of incumbent MDS stations and of previously proposed and authorized ITFS facilities within that PSA, even if these protected service areas extend into adjacent BTAs. The protected service area also includes registered receive sites.

[60 FR 57367, Nov. 15, 1995]

§ 21.934 Assignment or transfer of control of BTA authorizations.

(a)(1) A BTA or PSA authorization holder seeking approval for a transfer of control or assignment of its authorization within three years of receiving such authorization through a competitive bidding procedure must, together with its application for transfer of control or assignment, file with the Commission a statement indicating that its authorization was obtained through competitive bidding.

(2) Such applicant must also file with the Commission the associated contracts for sale, option agreements, management agreements, or other documents disclosing the total consideration that the applicant would receive in return for the transfer or assignment of its authorization. This information should include not only a monetary price, but also any future, contingent, in-kind, or other consideration (*e.g.*, management or consulting contracts either with or without an option to purchase; below market financing).

(b) Transfers of control or assignments of BTA or PSA authorizations are subject to the limitations of §§ 21.4, 21.900 and 21.912 of this subpart.

(c) The anti-trafficking provision of § 21.39 does not apply to the assignment or transfer of control of a BTA or PSA authorization, which was granted pursuant to the Commission's competitive bidding procedures.

[60 FR 36556, July 17, 1995]

§ 21.935 Assignment or transfer of control of station licenses within a BTA.

Licenses for individual stations within a BTA or PSA area issued to authorization holders may not be transferred or assigned unless they are acquired as part of a PSA.

[60 FR 36557, July 17, 1995]

§ 21.936 Cancellation of authorization.

(a) The Commission may revoke or cancel a BTA or PSA authorization for gross misconduct, misrepresentation or bad faith on the part of the authorization holder.

(b) Cancellation of a BTA or PSA authorization shall result in termination of any rights the authorization holder holds in individual proposed or authorized stations within the BTA or PSA.

[60 FR 36557, July 17, 1995]

§ 21.937 Negotiated interference protection.

(a) The level of acceptable electromagnetic interference that occurs at or within the boundaries of BTAs, PSAs, or an incumbent MDS station's 56.33 km (35 mile) protected service area can be negotiated and established by an agreement between the appropriate parties, provided that:

(1) The parties to such an agreement file with the Commission a written statement of no objection, acknowledging that the parties have agreed to accept a level of interference that does not meet the protection standards set forth in §§ 21.902 or 21.938 of the Commission's rules;

(2) The statement bears the signatures of all parties to the agreement, or the signatures of their representative agents; and

(3) The statement is filed with the Commission within 30 days of its ratification or file in conjunction with an application with which the agreement is associated, whichever is earliest.

[60 FR 36557, July 17, 1995]

§ 21.938 BTA and PSA technical and interference provisions.

(a) BTA or PSA authorization holders are expected to cooperate with one another by designing their stations in

a manner that protects service in adjoining BTAs and PSAs including consideration of interference abatement techniques such as cross polarization, frequency offset, directional antennas, antenna beam tilt, EIRP decrease, reduction of antenna height, and terrain shielding.

(b) Unless the affected parties have executed a written interference agreement in accordance with §21.937, and subject to the provisions of §§21.909, 21.913, 21.949, 74.939 of this chapter, 74.949 of this chapter and 74.985 of this chapter regarding the protection of response station hubs, booster service areas and 125 kHz channels from harmful electromagnetic interference, stations licensed to a BTA or PSA authorization holder must not cause harmful electromagnetic interference to the following:

(1) The protected service area of other authorization holders in adjoining BTAs or PSAs.

(2) The 56.33 km (35 mile) protected service areas of authorized or previously proposed MDS stations (incumbents).

(3) Registered receive sites and protected service areas of authorized or previously proposed stations in the Instructional Television Fixed Service pursuant to the manner in which interference is defined in §74.903(a).

(c)(1) ITFS applicants may locate a new station in an unused portion of a BTA or PSA where interference to a previously-proposed or authorized MDS station of a BTA or PSA authorization holder would not be predicted.

(2) With respect to ITFS applications only and for purposes of determining the existence of harmful electromagnetic interference as caused to MDS stations licensed to BTA or PSA authorization holders by subsequently proposed ITFS stations within that BTA, MDS stations licensed to BTA and PSA authorization holders and will have a protected service area of 56.33 km (35 miles), centered on the antenna site of the MDS stations.

(3) The 56.33 km (35 mile) protected service area afforded to a previously-proposed or authorized MDS station of a BTA or PSA authorization holder with respect to a subsequently proposed ITFS station is entitled to the interference protection standards of §21.902.

(4) An ITFS station authorized before September 15, 1995 may be modified, provided the power flux density of that station does not exceed -73 dBW/m^2 (or the appropriate value for bandwidth other than 6 MHz) at locations along the 56.33 km (35 mile) circle centered on the then-existing transmitting antenna site or service area of a collocated incumbent MDS station, as applicable.

(d) Unless the affected parties have executed a written interference agreement in accordance with §21.937, it shall be the responsibility of a BTA or PSA authorization holder to correct at its expense any condition of harmful electromagnetic interference caused to authorized MDS service at locations within other BTAs or PSAs or within the 56.33 km (35 mile) protected service areas of authorized or previously proposed ITFS and MDS stations (incumbents), or at authorized or previously proposed ITFS receive sites.

(e) Unless specifically excepted, BTA or PSA authorization holders are governed by the interference protection and other technical provisions applicable to MDS.

(f) The calculated free space power flux density from an MDS station, other than an incumbent MDS station, may not exceed -73 dBW/m^2 (or the appropriate value for bandwidth other than 6 MHz) at locations on BTA or PSA boundaries for which there is an unobstructed signal path from the transmitting antenna to the boundary, unless the applicant has obtained the written consent of the authorization holder for the affected BTA or PSA.

(g)(1) Authorization holders for BTAs or PSAs must notify authorization holders of adjoining areas of their application filings for new or modified stations; provided the proposed facility would produce an unobstructed signal path anywhere within the adjoining BTA or PSA.

(2) This service of written notification must include a copy of the FCC application and occur on or before the date the application is filed with the Commission.

(3) With regard to incumbent MDS stations, authorization holders for

BTAs or PSAs must comply with the requirements of § 21.902.

(h) Where a PSA adjoins a BTA and both authorizations are held by the same individual or entity, the PSA shall be considered an extension of the protected service area of the BTA regarding the interference protection, limiting signal strength, and notification provisions of this section.

[60 FR 36557, July 17, 1995, as amended at 60 FR 57367, Nov. 15, 1995; 63 FR 65112, Nov. 25, 1998; 64 FR 63737, Nov. 22, 1999]

§ 21.939 Harmful interference abatement.

In the event harmful interference occurs or appears to occur, after notice and an opportunity for a hearing, Commission staff may require any Multipoint Distribution Service conditional licensee or licensee to:

(a) Modify the station to use cross polarization, frequency offset techniques, directional antenna, antenna beam tilt, or

(b) Order an equivalent isotropically radiated power decrease, a reduction of transmitting antenna height, a change of antenna location, a change of antenna radiation pattern, or a reduction in aural signal power.

[60 FR 36557, July 17, 1995]

§ 21.940 Non-subscription MDS service.

The Commission must be notified, and prior Commission approval obtained, before Multipoint Distribution Service or Multichannel Multipoint Distribution Service may be provided on a non-subscription basis.

[63 FR 29668, June 1, 1998]

§§ 21.941–21.948 [Reserved]

§ 21.949 Individually licensed 125 kHz channel MDS response stations.

(a) The provisions of § 21.909(a), (e), (h), (j), (l) and (m) and § 74.939(j) of this chapter shall also apply with respect to authorization of 125 kHz channel MDS response stations not authorized under a response station hub license. The applicant shall comply with the requirements of § 21.902 and § 21.938 where appropriate, as well as with the provisions of §§ 21.909, 21.913, 74.939 and 74.985 of this chapter regarding the protection of response stations hubs and booster (and primary) service areas from harmful electromagnetic interference, using the appropriately adjusted interference protection values based upon the ratios of the bandwidths involved.

(b) An application for a license to operate a new or modified 125 kHz channel MDS response station not under a response station hub license shall be filed with Mellon Bank on FCC Form 331. The applicant shall supply the following information and certification on that form for each response station:

(1) The geographic coordinates and street address of the MDS response station transmitting antenna; and

(2) The manufacturer's name, type number, operating frequency, and power output of the proposed MDS response station transmitter; and

(3) The type of transmitting antenna, power gain, azimuthal orientation and polarization of the major lobe of radiation in degrees measured clockwise from True North; and

(4) A sketch giving pertinent details of the MDS response station transmitting antenna installation including ground elevation of the transmitter site above mean sea level; overall height above ground, including appurtenances, of any ground-mounted tower or mast on which the transmitting antenna will be mounted or, if the tower or mast is or will be located on an existing building or other manmade structure, the separate heights above ground of the building and the tower or mast including appurtenances; the location of the tower or mast on the building; the location of the transmitting antenna on the tower or mast; and the overall height of the transmitting antenna above ground.

(5) A certification that all licensees and applicants appropriately covered under the provisions of (a), above, have been served with copies of the application.

(c) Each MDS response station licensed under this section shall comply with the following:

(1) No MDS response station shall be located beyond the protected service area of the MDS station with which it communicates; and

(2) No MDS response station shall operate with a transmitter output power in excess of 2 watts; and

(3) No MDS response station shall operate at an excess of 16 dBW EIRP.

(d) During breaks in communications, the unmodulated carrier frequency of an analog transmission shall be maintained within 35 kHz of the assigned frequency at all times. Adequate means shall be provided to insure compliance with this rule.

(e) Each MDS response station shall employ a directive transmitting antenna oriented towards the transmitter site of the associated MDS station or towards the response station hub with which the MDS response station communicates. The beamwidth between half power points shall not exceed 15° and radiation in any minor lobe of the antenna radiation pattern shall be at least 20 dB below the power in the main lobe of radiation.

(f) A response station may be operated unattended. The overall performance of the response station transmitter shall be checked by the licensee of the station or hub receiving the response signal, or by the licensee's employees or agents, as often as necessary to ensure that the transmitter is functioning in accordance with the requirements of the Commission's rules. The licensee of the station or hub receiving the response signal is responsible for the proper operation of the response station and must have reasonable and timely access to the response station transmitter. The response station shall be installed and maintained by the licensee of the associated station or hub, or the licensee's employees or agents, and protected in such manner as to prevent tampering or operation by unauthorized persons. No response station which has not been installed by an authorized person may lawfully communicate with any station or hub.

[63 FR 65112, Nov. 25, 1998; 64 FR 4055, Jan. 27, 1999, as amended at 64 FR 63737, Nov. 22, 1999]

EFFECTIVE DATE NOTE: At 63 FR 65112, Nov. 25, 1998, §21.949 was added. Paragraphs (b) and (f) contain information and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 21.950 MDS subject to competitive bidding.

Mutually exclusive MDS initial applications are subject to competitive bidding. The general procedures set forth in 47 CFR chapter I, part 1, subpart Q are applicable to competitive bidding proceedings used to select among mutually exclusive MDS applicants, unless otherwise provided in 47 CFR chapter I, part 21, subpart K.

[60 FR 36557, July 17, 1995]

§ 21.951 MDS competitive bidding procedures.

(a) The following competitive bidding procedures will generally be used in MDS auctions. Additional, specific procedures may be set forth by public notice. The Commission may also design and test alternative procedures. *See* 47 CFR 1.2103 and 1.2104.

(1) Competitive bidding design. Simultaneous multiple round bidding will be used in MDS auctions, unless the Commission specifies by public notice the use of sequential oral (open outcry) bidding or sealed bidding (either sequential or simultaneous). Combinatorial bidding may also be used with any type of auction design.

(2) Competitive bidding mechanisms. The Commission may utilize the following mechanisms in MDS auctions:

(i) Sequencing. The Commission will establish and may vary the sequence in which the BTA service areas will be auctioned.

(ii) Grouping. In the event the Commission uses either a simultaneous multiple round competitive bidding design or combinational bidding, the Commission will determine which BTA service areas will be auctioned simultaneously or in combination.

(iii) Reservation price. The Commission may establish a reservation price, either disclosed or undisclosed, below which a BTA service area subject to auction will not be awarded.

(iv) Minimum bid increments. The Commission will, by announcement before or during an MDS auction, require minimum bid increments in dollar or percentage terms.

(v) Stopping rules. The Commission will establish stopping rules before or during multiple round MDS auctions in

order to terminate an auction within a reasonable time.

(vi) Activity Rules. The Commission will establish activity rules which require a minimum amount of bidding activity. In the event that the Commission establishes an activity rule in connection with a simultaneous multiple round auction, the Commission will allow bidders to request and to receive automatically waivers of such rule, the number of which will be determined by the Commission.

(vii) Suggested minimum bid. The Commission may establish suggested minimum bids on each BTA service area subject to auction. Bids below the suggested minimum bid would count as activity under the activity rule only if no bids at or above the suggested minimum bid are received.

(b) Identities of bidders. The Commission will generally release information concerning the identities of bidders before each auction but may choose, on an auction-by-auction basis, to withhold the identity of the bidders associated with bidder identification numbers. The Commission will announce by public notice before the MDS auction where the bidders' identities will be revealed.

(c) Commission control of auction. The Commission may delay, suspend, or cancel an MDS auction in the event of a natural disaster, technical obstacle, evidence of security breach, unlawful bidding activity, administrative necessity, or for any other reason that affects the fair and efficient conduct of the competitive bidding. The Commission also has the authority, at its sole discretion, to resume the competitive bidding starting from the beginning of the current or some previous round or cancel the competitive bidding in its entirety.

[60 FR 36557, July 17, 1995]

§ 21.952 Bidding application procedures.

(a) Short-form applications. To participate in MDS auctions, all applicants must submit short-form applications, along with all required certifications and exhibits specified by such forms, pursuant to the provisions of §1.2105(a) and any Commission public notices. See 47 CFR 1.2105(a).

(b) Filing of short-form applications. Prior to any MDS auction, the Commission will issue a public notice announcing the availability of BTA service areas and, in the event that mutually exclusive short-form applications (as defined by §21.925(a)(2)) are filed, the date of the auction for those BTA service areas. This public notice also will specify the date on or before which applicants intending to participate in an MDS auction must file their short-form applications in order to be eligible for that auction, and it will contain information necessary for completion of the application as well as other important information such as the material which must accompany the forms, any filing fee that must accompany the application or any upfront payment that will need to be submitted, and the location where the application must be filed.

(c) Modification and dismissal of short-form applications.

(1) Any short-form application that is not signed in some manner or form, including by electronic means, and does not contain all requisite certifications is unacceptable for filing and cannot be corrected subsequent to any applicable filing deadline. Such short-form application will be dismissed with prejudice.

(2) The Commission will provide bidders a limited opportunity to cure certain defects specified herein and to resubmit an amended short-form application. For MDS, we classify all amendments to a short-form application as major, except those to correct minor errors or defects, such as typographical errors, or those to reflect ownership changes or formation of bidding consortia or joint bidding arrangements specifically permitted under §21.953. A short-form application may be modified to make minor amendments. However, applicants who fail to correct defects in their short-form applications in a timely manner as specified by public notice will have their applications dismissed with no opportunity for resubmission.

(3) A short-form application will be considered to be a newly filed application if it is amended by a major amendment and may not be resubmitted after applicable filing deadlines.

[60 FR 36558, July 17, 1995]

§ 21.953 Prohibition of collusion.

(a) Except as provided in paragraphs (b), (c) and (d) of this section, after the filing of short-form applications, all applicants in an MDS auction are prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies, or discussing or negotiating settlement agreements, with other applicants until after the winning bidder makes the required down payment, unless such applicants are members of a bidding consortium or other joint bidding arrangement identified on the applicant's short-form application. Communications among applicants concerning matters unrelated to the MDS auction will be permitted after the filing of short-form applications.

(b) Applicants may modify their short-form applications to reflect formation of consortia or changes in ownership at any time before or during an auction, provided such changes do not result in a change in control of the applicant, and provided that the parties forming consortia or entering into ownership agreements have not applied for the same BTA service area.

(c) After the filing of short-form applications, applicants may make agreements to bid jointly for BTA service areas, provided the parties to the agreement have not applied for the same service areas.

(d) After the filing of short-form applications, a holder of a non-controlling attributable interest in an entity submitting a short-form application may, under the circumstances specified in §1.2105(c)(4), acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with, other applicants for the same BTA service areas. See 47 CFR 1.2105(c)(4).

(e) To reflect the changes in ownership or in the membership of consortia or joint bidding arrangements specified in paragraphs (b), (c) and (d) of this section, applicants must amend their short-form applications by submitting a revised short-form application, filed within two business days of any such change; such modifications will not be considered major amendments of the applications within the meaning of §21.952(c)(2). However, any amendment which results in the change of control of an applicant will be considered a major amendment of the short-form.

(f) For purposes of this section, the terms ''applicant'' and ''bids or bidding strategies'' are defined as set forth in 47 CFR 1.2105(c)(5).

[60 FR 36558, July 17, 1995]

§ 21.954 Submission of up front payments.

(a) The Commission will require applicants to submit an upfront payment prior to the MDS auction. The amount of the upfront payment for each BTA service area being auctioned and the procedures for submitting it will be set forth in a public notice. Upfront payments may be made by wire transfer or by cashier's check drawn in U.S. dollars from a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation and must be made payable to the Federal Communications Commission. No interest will be paid on upfront payments.

(b) For MDS auctions, the Commission will require each applicant to submit an upfront payment equal to the largest combination of activity units (as defined in the Commission's activity rules established pursuant to §21.951(a)(2)(vi)) associated with the BTAs on which the applicant anticipates being active in any single round or bidding. Applicants who are small businesses eligible for reduced upfront payments will be required to submit an upfront payment amount in accordance with §21.960(c). If an upfront payment is not in compliance with the Commission's rules, or if insufficient funds are tendered to constitute a valid upfront payment, the applicant shall have a limited opportunity to correct its submission to bring it up to the minimum valid upfront payment prior to the auction. An applicant who fails to submit a sufficient upfront payment to qualify it to bid on any BTA service area being auctioned will be ineligible to bid, its application will be dismissed, and any upfront payment it has made will be returned.

(c) The upfront payment(s) of a bidder will be credited toward any down payment required for the BTA service

areas on which the bidder is the winning bidder. Where the upfront payment amount exceeds the required down payment of a winning bidder, the Commission may refund the excess amount after determining that no bid withdrawal payments are owned by that bidder. In the event a payment is assessed pursuant to §21.959(a) for bid withdrawal or default, upfront payments or down payments on deposit with the Commission will be used to satisfy the bid withdrawal or default payment before being applied toward any additional payment obligations that the winning bidder may have.

[60 FR 36559, July 17, 1995]

§21.955 Submission of down payments.

(a) After bidding has ended on all BTA service areas, the Commission will identify and notify the winning bidders and declare the bidding closed in the MDS auction. Within five (5) business days after being notified that it is a winning bidder on a particular BTA service area(s), a winning bidder must submit to the Commission's lockbox bank such additional funds as are necessary to bring its total deposits (upfront payment plus down payment) up to twenty (20) percent of its winning bid(s). This down payment may be made by wire transfer or by cashier's check in U.S. dollars from a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation and must be made payable to the Federal Communications Commission.

(b) Winning bidders who are small businesses eligible for installment payments under §21.960(b) are only required to bring their total deposits up to ten (10) percent of their winning bids. Such small businesses must pay the remainder of the twenty (20) percent down payment within five (5) business days following release of the public notice stating that their BTA authorizations are ready to be issued.

(c) Down payments will be held by the Commission until the winning bidder has been issued its BTA authorization and has paid the remaining balance of its winning bid, in which case it will not be returned, or until the winning bidder is found unqualified to be a station licensee or has defaulted, in which case it will be returned, less applicable default payments. No interest will be paid on any down payment.

[60 FR 36559, July 17, 1995]

§21.956 Filing of long-form applications or statements of intention.

(a)(1) Within 30 business days of being notified of its status as a winning bidder, each winning bidder for a BTA service area will be required to submit either:

(i) An initial long-form application for an MDS station license, along with any required exhibits; or

(ii) A statement of intention with regard to the BTA service area, along with any required exhibits, showing the encumbered nature of the BTA, identifying all previously authorized or proposed MDS and ITFS facilities, and describing in detail the winning bidder's plan for obtaining the previously authorized and/or proposed MDS stations within the BTA.

(2) A winning bidder that fails to submit either the initial long-form application or statement of intention as required under this section, and fails to establish good cause for any late-filed application or statement, shall be deemed to have defaulted and will be subject to the payments set forth in §21.959(a).

(b) Each initial long-form application for an MDS station license within an auction winner's BTA service area, and each statement of intention with regard to an auction winner's BTA service area, must also include the following:

(1) FCC Form 430;

(2) An exhibit detailing the terms and conditions and parties involved in any bidding consortia, joint venture, partnership or other agreement or arrangement the winning bidder had entered into relating to the competitive bidding process prior to the time bidding was completed (*see* 47 CFR 1.207(d));

(3) An exhibit complying with 47 CFR 1.2110(i) and 21.960(e), if the winning bidder submitting the long-form application or statement of intention claims status as a designated entity.

(c) Subsequent long-form applications for additional MDS station licenses within the BTA service areas of winning bidders may be submitted at

any time during the five year build-out period and need not contain the exhibits specified in paragraphs (b)(2) through (3) of this section.

[60 FR 36559, July 17, 1995, as amended at 61 FR 18098, Apr. 24, 1996]]

§ 21.957 Petitions to deny against long-from applications; comments on statements of intention.

(a) Within thirty (30) days after the Commission gives public notice that a long-form application for an MDS station license submitted by a winning bidder within its BTA service area has been accepted for filing, petitions to deny that application may be filed. Any such petitions and oppositions thereto must comply with the requirements of 47 CFR 1.2108 and 21.30.

(b) Parties wishing to comment on or oppose the issuance of a BTA authorization issued in connection with the filing of a statement of intention by a winning bidder must do so prior to the Commission's issuance of the BTA authorization.

[60 FR 36559, July 17, 1995]

§ 21.958 Full payment and issuance of BTA authorizations.

Each winning bidder, except for small businesses eligible for installment payments under §21.960(b), must pay the balance of its winning bid for its BTA service area(s) in a lump sum within five (5) business days following the release of the public notice stating that the BTA authorization(s) is ready to be issued. A winning bidder who submitted a long-form application for an MDS station license within its BTA service area pursuant to §21.956(a) will receive its BTA authorization concurrent with the grant of its MDS conditional station license within its BTA service area. A winning bidder who submitted a statement of intention with regard to its BTA service area pursuant to §21.956(a) will receive its BTA authorization following the Commission's review of its statement of intention. The Commission will issue a BTA authorization to a winning bidder within ten (10) business days following notification of receipt of full payment of the amount of the winning bid.

[60 FR 36559, July 17, 1995]

§ 21.959 Withdrawal, default and disqualification.

(a) When the Commission conducts an MDS simultaneous multiple round auction, the Commission will impose additional payment requirements on bidders who withdraw high bids during the course of an auction, who default on down or full payments due after an auction closes, or who are disqualified. The withdrawal and default payments set forth below will be deducted from any upfront payments or down payments that the withdrawing, defaulting or disqualified bidder has deposited with the Commission.

(1) Bid withdrawal prior to close of auction. A bidder who withdraws a high bid during the course of an auction will be subject to a payment equal to the difference between the amount bid and the amount of the winning bid the next time the license is offered by the Commission. No withdrawal payment will be assessed if the subsequent winning bid exceeds the withdrawn bid.

(2) *Default or disqualification after close of auction. See* §1.2104 (g)(2) of this chapter.

(b) If the Commission were to conduct a sequential oral (open outcry) auction or sealed bid auction for MDS, the Commission may modify the payments set forth in paragraph (a) of this section to be paid in the event of bid withdrawal, default or disqualification; provided, however, that such payments shall not exceed the payments specified in paragraph (a) of this section.

(1) In the case of sealed bidding:

(i) If a bid is withdrawn before the Commission releases the initial public notice announcing the winning bidder(s), no bid withdrawal payment will be assessed.

(ii) If a bid is withdrawn after the Commission release the initial public notice announcing the winning bidder(s), the bid withdrawal payment will be equal to the difference between the high bid amount and the amount of the next highest bid. Losing bidders will only be subject to this bid withdrawal payment for a period of thirty (30) days after the Commission release the initial public notice announcing the winning bidders.

(2) In the case of oral sequential (open outcry) bidding:

(i) If a bid is withdrawn before the bidder has declared the bidding to be closed for the BTA service area bid on, no bid withdrawal payment will be assessed.

(ii) If a bid is withdrawn after the Commission has declared the bidding to be closed for the BTA service area bid on, the bid withdrawal payment of paragraphs (a) (1) and (2) of this section will apply.

(c) If a winning bidder withdraws it bid after the Commission has declared competitive bidding closed or fails to remit the required down payment within five (5) business days after the Commission has declared competitive bidding closed, the bidder will be deemed to have defaulted, its application will be dismissed, and it will be liable for the default payment specified in paragraph (a)(2) of this section. In such event, the Commission may either reauction the BTA service area to existing or new applicants or offer it to the other highest bidders (in descending order) at their final bids.

(d) A winning bidder who is found unqualified to be an MDS station licensee, fails to remit the balance of its winning bid in a timely manner, or defaults or is disqualified for any reason after having made the required down payment, will be deemed to have defaulted and will be liable for the payment set forth in paragraph (a)(2) of this section. In such event, the Commission will generally conduct another auction for the BTA service area, affording new parties an opportunity to file applications for such service area.

(e) Bidders who are found to have violated the antitrust laws or the Commission's rules in connection with their participation in the MDS competitive bidding process may be subject, in addition to any other applicable sanctions, to loss of their upfront payment, down payment or full bid amount, and may be prohibited from participating in future auctions.

[60 FR 36560, July 17, 1995, as amended at 63 FR 2348, Jan. 15, 1998]

§ 21.960 Designated entity provisions for MDS.

(a) *Designated entities.* As specified in this section, designated entities that are winning bidders for BTA service areas are eligible for special incentives in the auction process. See 47 CFR 1.2110.

(b) *Installment payments.* Small businesses and small business consortia may elect to pay the full amount of their winning bids for BTA service areas in installments over a ten (10) year period running from the date that their BTA authorizations are issued.

(1) Each eligible winning bidder paying for its BTA authorization(s) on an installment basis must deposit by wire transfer or cashier's check in the manner specified in §21.955 sufficient additional funds as are necessary to bring its total deposits to ten (10) percent of its winning bid(s) within five (5) business days after the Commission has declared it the winning bidder and closed the bidding. Failure to remit the required payment will make the bidder liable for the payments set forth in §21.959(a)(2).

(2) Within five (5) business days following release of the public notice stating that the BTA authorization of a winning bidder eligible for installment payments is ready to be issued, the winning bidder shall pay another ten (10) percent of its winning bid, thereby commencing the eligible bidder's installment payment plan. The Commission will issue the BTA authorization to the eligible winning bidder within ten (10) business days following notification of receipt of this additional ten (10) percent payment. Failure to remit the required payment will make the bidder liable for the payments set forth in §21.959(a)(2).

(3) Upon issuance of a BTA authorization to a winning bidder eligible for installment payments, the Commission will notify such eligible BTA authorization holder of the terms of its installment payment plan. For MDS, such installment payment plans will:

(i) Impose interest based on the rate of ten (10) year U.S. Treasury obligations at the time of issuance of the BTA authorization, plus two and one half (2.5) percent;

(ii) Allow installment payments for a ten (10) year period running from the date that the BTA authorization is issued;

(iii) Begin with interest-only payments for the first two (2) years; and

(iv) Amortize principal and interest over the remaining years of the ten (10) year period running from the date that the BTA authorization is issued.

(4) Conditions and obligations. *See* § 1.2110(f)(4) of this chapter.

(5) Unjust enrichment. (i) If an eligible BTA authorization holder that utilizes installment financing under this paragraph seeks to assign or transfer control of its BTA authorization to an entity not meeting the eligibility standards for installment payments, the holder must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of assignment or transfer as a condition of approval. If an eligible BTA authorization holder that utilizes installment financing under this subsection seeks to partition, pursuant to § 21.931, a portion of its BTA containing one-third or more of the population of the area within its control in the licensed BTA to an entity not meeting the eligibility standards for installment payments, the holder must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of partition as a condition of approval.

(ii) If a BTA authorization holder that utilizes installment financing under this subsection seeks to make any change in ownership structure that would result in the holder losing eligibility for installment payments, the holder shall first seek Commission approval and must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of the change in ownership structure as a condition of approval. Increases in gross revenues that result from revenues from operations, business development or expanded service shall not be considered changes in ownership structure under this paragraph.

(c) *Reduced upfront payments.* A prospective bidder that qualifies as a small business, or as a small business consortia, is eligible for a twenty-five (25) percent reduction in the amount of the upfront payment required by § 21.954. To be eligible to bid on a particular BTA, a small business will be required to submit an upfront payment equal to seventy-five (75) percent of the upfront payment amount specified for that BTA in the public notice listing the upfront payment amounts corresponding to each BTA service area being auctioned.

(d) *Bidding credits.* A winning bidder that qualifies as a small business, or as a small business consortia, may use a bidding credit of fifteen (15) percent to lower the cost of its winning bid on any of the BTA authorizations awarded in the MDS auction.

(1) Unjust enrichment. *See* § 1.2111 of this chapter.

(2) [Reserved]

(e) *Short-form application certification; Long-form application or statement of intention disclosure.* An MDS applicant claiming designated entity status shall certify on its short-form application that it is eligible for the incentives claimed. A designated entity that is a winning bidder for a BTA service area(s) shall, in addition to information required by § 21.956(b), file an exhibit to either its initial long-form application for an MDS station license, or to its statement of intention with regard to the BTA, which discloses the gross revenues for each of the past three years of the winning bidder and its affiliates. This exhibit shall describe how the winning bidder claiming status as a designated entity satisfies the designated entity eligibility requirements, and must list and summarize all agreements that affect designated entity status, such as partnership agreements, shareholder agreements, management agreements and other agreements, including oral agreements, which establish that the designated entity will have both *de facto* and *de jure* control of the entity. *See* 47 CFR 1.2110(i).

(f) *Records maintenance.* All holders of BTA authorizations acquired by auction that claim designated entity status shall maintain, at their principal place of business or with their designated agent, an updated documentary file of ownership and revenue information necessary to establish their status. Holders of BTA authorizations or their successors in interest shall maintain such files for a ten (10) year period running from the date that their BTA authorizations are issued. The files must be made available to the Commission upon request.

(g) *Audits.* BTA authorization holders claiming eligibility under designated entity provisions shall be subject to audits by the Commission, using in-house or contract resources. Selection for an audit may be random, on information, or on the basis of other factors. Consent to such audits is part of the certification included in the short-form application. Such consent shall include consent to the audit of the holders' books, documents and other material (including accounting procedures and practices), regardless of form or type, sufficient to confirm that such holders' representations are, and remain, accurate. Such consent shall also include inspection at all reasonable times of the facilities, or parts thereof, engaged in providing and transacting business or keeping records regarding licensed MDS offerings, and shall also include consent to the interviewing of principals, employees, customers, and suppliers of the BTA authorization holders.

[60 FR 36560, July 17, 1995, as amended at 60 FR 57367, Nov. 15, 1995; 63 FR 2348, Jan. 15, 1998]

§ 21.961 Definitions applicable to designated entity provisions.

(a) Scope. The definitions in this section apply to § 21.960, unless otherwise specified in that section.

(b) Small business; consortium of small businesses.

(1) A small business is an entity that together with its affiliates has average annual gross revenues that are not more than $40 million for the preceding three calendar years.

(2) *Aggregation of gross revenues.*

(i) Except as specified in paragraph (b)(2)(ii) of this section, the gross revenues of the applicant (or BTA authorization holder) and its affiliates shall be considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or holder) is a small business.

(ii) Where an applicant (or BTA authorization holder) is a consortium of small businesses, the gross revenues of each small business shall not be aggregated.

(3) A small business consortium is a conglomerate organization formed as a joint venture between mutually-independent business firms, each of which individually satisfies the definition of a small business.

(c) Gross revenues shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (*e.g.,* cost of goods sold), as evidenced by audited financial statements for the preceding relevant number of calendar years, or, if audited financial statements were not prepared on a calendar-year basis, for the preceding relevant number of fiscal years. If an entity was not in existence for all or part of the relevant period, gross revenues shall be evidenced by the audited financial statements of the entity's predecessor-in-interest or, if there is no identifiable predecessor-in-interest, unaudited financial statements certified by the applicant as accurate.

(d) The definition of an affiliate of an applicant is set forth in 47 CFR 1.2110(b)(4).

[60 FR 36562, July 17, 1995, as amended at 60 FR 57368, Nov. 15, 1995]

PART 22—PUBLIC MOBILE SERVICES

Subpart A—Scope and Authority

Subpart B—Licensing Requirements and Procedures

APPLICATIONS AND NOTIFICATIONS

COMPETITIVE BIDDING PROCEDURES